

BCI Exhibit 631

Page 1

1 IN THE UNITED STATES BANKRUPTCY COURT
2 FOR THE SOUTHERN DISTRICT OF NEW YORK
3
4

5 In re:)
6 LEHMAN BROTHERS) Chapter 11
7 HOLDINGS, INC., et al,) Case No. 08-13555(JMP)
8) (Jointly Administered)
9)
10 Debtors.)
11 -----)
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12 30(b)(6) DEPOSITION OF
13 CLEARY GOTTLIEB STEEN & HAMILTON LLP
14 by
15 VICTOR I. LEWKOW
16 New York, New York
17 Wednesday, February 10, 2010
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21
22

23 Reported by:
24 MAYLEEN CINTRON, RMR, CRR
25 JOB NO. 28226

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3
4 February 10, 2010
5 10:02 a.m.
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8 30(b)(6) DEPOSITION OF CLEARY
9 GOTTLIEB STEEN & HAMILTON LLP, by VICTOR I.
10 LEWKOW, held at the offices of Cleary
11 Gottlieb Steen & Hamilton LLP, 450 Park
12 Avenue, New York, New York, pursuant to
13 Notice, before MayLeen Cintron, a Registered
14 Merit Reporter, Certified Realtime Reporter,
15 and Notary Public of the State of New York.
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16 ROBERT P. DAVIS, ESQ.
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1 -Lewkow-
2 VICTOR I. LEWKOW,
3 called as a witness, having been duly
4 sworn by a Notary Public, was examined
5 and testified as follows:
6 THE REPORTER: Please state your
7 full name for the record.
8 THE WITNESS: Victor -- do you need
9 a middle name? Ira Lewkow, L-E-W-K-O-W.
10 MR. GAFFEY: That's all we needed.
11 We just wanted to know your middle
12 name.
13 EXAMINATION BY
14 MR. GAFFEY:
15 Q. Good morning, Mr. Lewkow. My name
16 is Bob Gaffey, I'm from Jones Day and we are
17 special counsel to the Debtors in this
18 proceeding.
19 Have you had your deposition taken
20 before?
21 A. Once.
22 Q. In the interest of efficiency, I
23 will give you the short version of the usual
24 instructions. If at any point you don't
25 understand a question, please say so and I
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1 -Lewkow-
2 seller. There was a -- there was a provision
3 that said that on a certain pool of positions,
4 that we would be -- that Barclays would be
5 acquiring at the closing, that if, as I
6 recall -- and you know, without having the
7 Agreement in front of me to look at the words,
8 I always defer to what's in the contract.

9 But my recollection is that the --
10 there was a provision that if within some
11 period, I think it was a year, to the extent
12 that Barclays actually sold positions -- not
13 what their value was on a given date or the
14 like, not as audit, not if they held
15 positions, even if those positions increased
16 enormously in value or if they went down in
17 value.

18 But if with respect to some pool --
19 and I don't remember the details of how it
20 worked because that provision was later
21 dropped, as you know. There was a provision
22 that if -- with respect to some of those
23 assets, if we -- if Barclays sold them during,
24 I think, the first year, there would be some
25 sharing of the -- of the profit compared to

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1 -Lewkow-
2 what -- I forget what the base was exactly, as
3 to what date the assumed valuation was.

4 So there was a provision for
5 additional consideration potentially to flow
6 to the seller.

7 **Q. I'll show you the Asset Purchase**
8 **Agreement in a minute and we'll spend some**
9 **time with it today.**

10 **But is the provision that you**
11 **described, is that fairly described as a**
12 **post-closing purchase price adjustment**
13 **provision?**

14 MR. MORAG: Objection. Asked and
15 answered.

16 A. Yeah, I have nothing more to say
17 other than what I said on that subject.

18 **Q. I'm not sure I have an answer to**
19 **the question as to whether it is -- the**
20 **provision you described is what you would**
21 **describe, and I'm referring to Paragraph 4 of**
22 **your affidavit, as a "post-closing purchase**
23 **price adjustment provision"?**

24 A. Well, with due respect, if you read
25 my declaration, it says, "...a pre-closing

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1 -Lewkow-
2 and/or post-closing purchase price adjustment
3 provision relating to the valuation of the
4 transferred assets and liabilities". This was
5 not such a provision.

6 **Q. So to qualify as a balance sheet**
7 **transaction, in your view, the pre or post**
8 **closing purchase price adjustment provision**
9 **would have to relate to a valuation of the**
10 **assets and liabilities? It's that last piece,**
11 **"valuation of the assets and liabilities" that**
12 **defines it as a purchase price adjustment**
13 **provision as you meant it in your Declaration?**

14 MR. MORAG: Object to form.

15 A. As I said earlier, to me a balance
16 sheet transaction is when you later prepare --
17 I'm not sure that the word -- I would say do a
18 valuation from an accounting standpoint. As a
19 balance sheet, normally you would prepare a
20 balance sheet based on generally accepted
21 accounting principles, have it audited and
22 adjust the purchase price based on that.

23 **Q. Is there a reason such a mechanism**
24 **was not included in the transaction at issue**
25 **here?**

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1 -Lewkow-

2 A. You know, I would -- I don't recall
3 whether at any point in time, whether Lehman
4 or its advisors requested such a provision. I
5 just don't recall. Certainly if they did, it
6 came and went very quickly in the discussions
7 of the concept of the Asset Purchase
8 Agreement. But I don't recall there ever
9 being such a provision.

10 I would note that we were -- as
11 everybody knew then and knows now, it was an
12 incredibly volatile couple of days. The Asset
13 Purchase Agreement was being negotiated on
14 that Monday and Tuesday after Lehman had filed
15 for Chapter 11 late Sunday night, early Monday
16 morning.

17 And I think the idea that anyone
18 had a wonderfully exact knowledge as to what
19 the value of portfolio assets in particular
20 were at that point in time, it would be
21 amazing because there was a very uncertain
22 value at that point in time.

23 **Q. Did Cleary Gottlieb play any role**
24 **in the negotiation of the transaction with**
25 **regard to arriving at a valuation of the**

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1 **-Lewkow-**2 **assets to be transferred?**

3 MR. MORAG: Object to the form.

4 Vague.

5 A. No.

6 **Q. Were there negotiations between the**
7 **parties concerning the value of the assets to**
8 **be transferred?**9 A. As described in my declaration,
10 there were discussions, I would not -- I don't
11 believe there was a negotiation, as I heard it
12 described. And I want to stay away from
13 privileged communications, although I'm not
14 sure I have any in particular in mind now.
15 But obviously, I assume none of -- you're not
16 asking me at any point -- if you are, I assume
17 I'll be telling you not, that I won't, or one
18 of the lawyers here will tell me not to.19 But it was my understanding that
20 Lehman -- that Barclays -- let me step back a
21 second.22 Even before the bankruptcy, even
23 before that Friday morning when -- the Friday
24 before the 15th, the 12th I guess when
25 Barclays had first retained us certainly, they

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1 **-Lewkow-**2 may have gotten involved a little bit the day
3 before or something. But even before Barclays
4 had started thinking about, as far as I know,
5 Lehman, there had been stories in the press
6 about suggesting that Lehman had been slow to
7 revalue assets, and that they had inflated
8 values in their portfolio.9 But beyond that in the very limited
10 time, as I understood it, that Barclays had
11 been provided with some information about the
12 portfolio that we were -- that Barclays was
13 being asked to -- that it be acquiring as part
14 of its acquisition of basically the entire
15 business with certain exceptions and the
16 assumption of very substantial certain
17 specified liabilities, when their people,
18 financial people, trading people, whoever it
19 was -- and I'm not sure I knew all the people
20 involved. It was a new client in the
21 United -- I don't know the name of all the
22 people who were going -- who were around and
23 in the different rooms that we were -- that
24 meetings were taking place on that Monday and
25 Tuesday up at Lehman Brothers on the -- on the

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1 **-Lewkow-**

2 big conference and dining floor.

3 But it was my understanding that
4 Barclays people had reviewed certain
5 information about the assets and liabilities
6 and had thought that the -- there were
7 large -- certain category types of assets and
8 the like that had, as last marked by Lehman,
9 were substantially overstated. Whether they
10 had been overstated as of the date they
11 originally been marked or were overstated
12 because of the passage of a couple of days, I
13 believe they would not have been marked for a
14 couple of days. It's my recollection. I
15 could be wrong on that.16 But one way or another, or a
17 combination of the two, that the Barclays
18 people had concluded that the Lehman marks
19 were substantially overstated.20 **Q. When was Cleary first retained in**
21 **connection with this transaction?**22 A. We were retained on Friday. Not on
23 this transaction, we were retained on the
24 Friday before the bankruptcy on the 12th,
25 early that morning, to assist Barclays in

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1 **-Lewkow-**2 looking at a potential much larger transaction
3 to buy not just a substantial part of the U.S.
4 and Canadian broker-dealer investment banking
5 business, but a much larger portion of Lehman
6 Brothers.7 I don't know whether initially -- I
8 can't recall whether initially it might have
9 been all of Lehman. I think very early it
10 became clear it was not quite everything but
11 it was a larger universe than what we ended up
12 trying to do in doing, starting with the
13 Monday filing the Chapter 11.14 **Q. In the interest of everyone's time,**
15 **we've taken a lot of depositions in this case.**
16 **Some time over the weekend, the concept of**
17 **that larger transaction came to an end, those**
18 **negotiations?**

19 A. Correct. Sunday around midday.

20 **Q. And around some point, negotiations**
21 **resumed with respect of the smaller**
22 **transaction that was ultimately concluded,**
23 **correct?**24 A. I don't know if it matters. But I
25 would use the word "resume."

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1 -Lewkow-

2 **Q. Okay.**

3 A. As far as I can tell, they stopped
4 on Sunday, people went home and saw their
5 families. And I got a call Monday morning,
6 "Well, can you come up to Lehman Brothers?
7 We're going to see if we can do a deal. If
8 they did file as they said they would" -- we
9 thought they would -- "they filed in
10 Chapter 11 and now want to see whether or not
11 there's something we can do to purchase" --
12 you know, I don't remember how it was
13 described to me in that initial call.

14 But, "Can you come up to Lehman
15 Brothers?"

16 MR. MORAG: Mr. Lewkow, let me
17 caution you on privilege. I think you
18 just said the gist to the conversation,
19 which is sufficient for these purposes.

20 **Q. You came back?**

21 A. I went up to Lehman Brothers.

22 **Q. Let's just talk about the period**
23 **when you came back. In the negotiations that**
24 **began then, what steps, if any, were taken to**
25 **accommodate Barclays' view that the Lehman**

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1 -Lewkow-

2 **marks were substantially overstated, to use**
3 **your term?**

4 MR. MORAG: Objection. Vague.

5 A. Yeah. I guess -- I don't know what
6 you mean by "accommodate." And the word --
7 you also used the word "the view." I think
8 that view -- I did mention the newspaper.

9 MR. MORAG: I think we need a
10 break.

11 (Whereupon, a recess was taken
12 from 10:22 a.m. to 10:25 a.m.)

13 BY MR. GAFFEY:

14 **Q. In the negotiations that took place**
15 **in connection with the transaction that's**
16 **brought us here today, Mr. Lewkow, were there**
17 **discussions, to your knowledge, between the**
18 **folks at Barclays and the folks at Lehman**
19 **about Barclays' view that the assets of Lehman**
20 **were overstated on its books?**

21 MR. MORAG: Object to the form.

22 A. Yes. As to certain assets.

23 **Q. Can you tell me what you know with**
24 **regard to those discussions?**

25 A. As I stated in my declaration,

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1 -Lewkow-

2 Barclays, was my understanding, that Barclays'
3 trading and/or financial folks had been
4 provided certain information about the trading
5 positions; that it was contemplated that
6 Barclays would assume as part of an
7 acquisition of the business of substantially
8 all of the business.

9 And in the course of that, Barclays
10 had -- Barclays people had reached the view
11 that there were very significant -- that the
12 aggregate carrying value that they had been
13 furnished by Lehman was substantially higher
14 than Barclays believed was appropriate that
15 Monday or Tuesday.

16 **Q. And by "aggregate carrying value",**
17 **do you mean Lehman's book value?**

18 A. It's my -- I'm not an accountant,
19 as you know. I'm a lawyer. It is my
20 understanding that for an entity such as
21 Lehman, they are supposed to -- under
22 regulatory accounting principles, maybe
23 generally accepted accounting principles, I
24 don't know. But as a general matter,
25 broker-dealers mark their portfolio to market

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1 -Lewkow-

2 on a daily basis. And I believe that means
3 their book value is effectively adjusted each
4 day. To the extent that a balance sheet is
5 prepared, the balance sheet is prepared based
6 on those marks.

7 **Q. So when you use the phrase**
8 **"aggregate carrying value," were you referring**
9 **to Lehman's books marked to market in that**
10 **manner?**

11 MR. MORAG: Object to the form.

12 MR. HUME: Objection, asked and
13 answered.

14 A. I think I've got nothing more to
15 say on that.

16 **Q. What did you mean to say when you**
17 **said "aggregate carrying value"?**

18 A. The value -- what I hear people
19 refer to as "the marks." What they were being
20 marked at on the books of Lehman by Lehman.

21 **Q. And in the negotiations of the**
22 **transaction, were any steps taken to address**
23 **Barclays' concern that the aggregate carrying**
24 **value was substantially higher than it should**
25 **have been?**

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1 **-Lewkow-**

2 MR. HUME: Objection. Vague.

3 MR. MORAG: Objection. Asked and
4 answered.

5 A. I have -- I've told you -- I have
6 nothing to add to my answer.

7 **Q. Well, I'm afraid that's not going
8 to work, so I do need an answer to the
9 question.**

10 A. Your question asked in the
11 negotiations. I don't -- I don't -- if you
12 mean in the negotiations of the transaction, I
13 think my answer would be no, as I have said in
14 my declaration and in my statement.

15 Barclays was furnished information
16 which led it to believe that Lehman's marks
17 were not correct and overstated the value of
18 assets, and was -- Barclays was not prepared
19 to do a deal with -- where they were
20 overstated marks on the Lehman books of large
21 amounts.

22 **Q. So if Barclays was not prepared to
23 do a deal where there were overstatements on
24 Lehman's books of large amounts, what did
25 Barclays do to address that concern in order**

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1 **-Lewkow-**

2 **to conclude a transaction?**

3 A. Barclays made -- made its
4 position -- made its view of the marks, that
5 they were overstated substantially, clear to
6 Lehman people and urged -- my understanding,
7 they urged Lehman to take a fresh look at the
8 values that they were carrying them on on
9 their books because it was at a crazy world,
10 and it was something that Lehman should take a
11 fresh look at to -- to both deal with the
12 passage of time and information.

13 I don't know what -- you know, in
14 my declaration, I mention an example that was
15 mentioned in a broad public -- "public" is the
16 wrong statement. With both sides present,
17 including lawyers, including me -- of the
18 example of a particular position where
19 Barclays had a junior position of -- junior
20 tranche position from the same issuer, same
21 type of security, and was carrying it --

22 I'm sorry. Barclays had a senior
23 position and was carrying it at a bigger
24 discount to par than Lehman was carrying the
25 junior position. And those are -- you know,

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1 **-Lewkow-**

2 I'm sure there were other examples. That was
3 the one that was easy to explain to us lawyers
4 as evidencing why Barclays believed Lehman
5 needed to take a fresh look at what it -- how
6 it was carrying certain portions of the
7 portfolio on its books and whether or not they
8 needed to revise their marks.

9 **Q. Did the level at which Lehman was
10 carrying its assets on the books affect the
11 price which Barclays was willing to pay on the
12 transaction?**

13 MR. MORAG: Object to form.

14 A. I think it affected their
15 willingness to do the deal. The price was
16 what was in the Agreement where we acquired
17 certain assets, acquired certain liabilities,
18 agreed to make certain payments, assumed a
19 certain level of obligations.

20 We were buying a business as a
21 whole; the purchase price was the whole
22 transaction. We were not -- no one from
23 Barclays went into this to buy a portfolio; it
24 was to buy substantially all the assets of a
25 business.

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1 **-Lewkow-**

2 **Q. Describe for me, if you would, the
3 price that Barclays paid in that purchase.**

4 A. At what time, sir?

5 **Q. Good point. Describe for me the
6 price that Barclays agreed to pay for that
7 business on September 16, 2008?**

8 MR. HUME: I'm going to just object
9 to the extent that it calls for
10 interpretation of the contract which he
11 hasn't been shown.

12 (Discussion off the record.)

13 **Q. I think the question on the table,
14 Mr. Lewkow, is: Will you describe for me the
15 price that Barclays agreed to pay for that
16 business on September 16, 2008?**

17 MR. MORAG: Objection. To the
18 extent it calls for a legal
19 interpretation of the contract. If you
20 recall generally the terms.

21 A. Look, I think the contract is the
22 contract. Without having it in front of me, I
23 may omit certain things. But in general
24 terms, my recollection is that under the Asset
25 Purchase Agreement as signed late on the 16th

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1 -Lewkow-
2 or early on the 17th, I think it is dated the
3 16th, Barclays agreed to make payments. Some
4 were going to be based on appraised value of
5 certain specified real estate assets.

6 There was a -- they were also going
7 to pay another \$250 million. They were going
8 to, under the Asset Purchase Agreement, they
9 would pay, as I testified earlier, under
10 certain circumstances if they sold certain
11 portfolio assets within one year and netted a
12 profit as described in the Asset Purchase
13 Agreement, they would share some of that
14 profit with Lehman Brothers.

15 They were also taking on various
16 liabilities, including liabilities related to
17 the portfolio, part of the portfolio positions
18 that they were taking. They were agreeing to
19 pay certain cure costs, the amount of which --
20 whatever they turned out to be. And they also
21 were agreeing to pay certain compensation
22 amounts under the Asset Purchase Agreement.

23 I may be forgetting some things.
24 If I had the the Agreement in front of me, I'd
25 be happy to go through it and take another

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1 -Lewkow-
2 look.

3 **Q. I understand, sir, it is your**
4 **general recollection.**

5 **The deal, as it finally closed, did**
6 **it change the structure you just described?**

7 MR. MORAG: With respect to the
8 purchase price?

9 MR. GAFFEY: Yes.

10 A. Yes.

11 **Q. How did it change?**

12 A. It changed -- first of all, the
13 provision that required Barclays, under some
14 scenarios, to share some of the potential
15 profit on the -- if they sold within a year.
16 I think it was a year, it might have been six
17 months. If they sold within a fixed period
18 certain of the positions that they assumed
19 they made a profit, some portion of that would
20 go to Lehman Brothers.

21 That provision was dropped. So
22 that was a change in one of the price related
23 provisions. And -- I remember the other.

24 The other thing -- I don't know if
25 I would call it a price provision or not, but

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1 -Lewkow-
2 it involved money; cash.

3 And the original agreement, the
4 Asset Purchase Agreement, had a concept of
5 retained cash, if I remember the defined term,
6 which provided that that amount of cash would
7 be among the assets that Barclays would be
8 receiving as part of the acquisition. And
9 that was -- that was dropped subsequently from
10 the -- from the transaction.

11 **Q. Anything else that you remember in**
12 **terms of changes between the transaction, the**
13 **pricing provisions of the transaction on**
14 **September 16th, and the provisions as the deal**
15 **ultimately closed?**

16 MR. HUME: Objection to the extent
17 it calls for an interpretation of the
18 contract.

19 MR. MORAG: At this point, I'm
20 going to ask you to show it to him.

21 A. It would be helpful to see the
22 Clarification Letter to know that. Let me
23 just for one second.

24 Let me just... none that occurs to
25 me without looking at the contract.

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1 -Lewkow-

2 **Q. Let me show you what's previously**
3 **been marked as Deposition Exhibit 1, a copy of**
4 **the Asset Purchase Agreement.**

5 **Have you had a chance to review**
6 **this prior to your deposition today, reviewed**
7 **it recently?**

8 A. Yes.

9 **Q. Would you take a look at page 14 of**
10 **that exhibit, sir, Section 3.3 of the**
11 **Agreement.**

12 A. Yes.

13 **Q. That provision, "Adjustment to cash**
14 **amount," is that the provision you've been**
15 **talking about when you talked about potential**
16 **payments to Lehman depending on the values of**
17 **certain assets after a year?**

18 A. Let me just reread it.

19 **Q. Sure.**

20 MR. MORAG: Objection.

21 **Q. Don't take my explanation. But I**
22 **just want to know if that's the agreement,**
23 **that's the provision you've been talking**
24 **about?**

25 MR. MORAG: Object to the

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1 -Lewkow-
2 characterization of it, but you can
3 answer if that's the provision you were
4 referring to earlier.

5 (Witness reviewing document.)

6 A. Yes.

7 **Q. Now, having taken a look at**
8 **Section 3.3 of the Asset Purchase Agreement,**
9 **and directing your attention again to**
10 **Paragraph 4 of your Declaration, could you**
11 **tell me, sir, whether Section 3.3 is a**
12 **post-closing purchase price adjustment**
13 **provision relating to valuation of transferred**
14 **assets and liabilities, as you described it in**
15 **Paragraph 4?**

16 MR. HUME: Objection. Asked and
17 answered.

18 MR. MORAG: You can answer.

19 A. No, I don't think so.

20 **Q. Why not?**

21 A. Because if you were going to do it
22 based on a valuation, you would have valued
23 all of the -- those -- at least all of the
24 portfolio assets that are being -- all of the
25 positions, and it would turn not on whether or

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1 -Lewkow-
2 not Barclays in its complete discretion had or
3 had not sold some, if not others, of those
4 assets.

5 **Q. Do you know if a balance sheet of**
6 **any kind was prepared in connection with the**
7 **Asset Purchase Agreement?**

8 MR. MORAG: Object to the form.

9 A. I don't know whether I would
10 characterize it as a balance sheet. There was
11 a one-page piece of paper that somebody from
12 Lehman Brothers went into the room late in the
13 game, late in the -- you know, late that
14 Tuesday. I don't remember what time, that had
15 certain categories of assets other than
16 liabilities on the -- on the -- on it, that
17 was talked about previously and is referred to
18 in one place in the Asset Purchase Agreement.

19 **Q. Mr. Lewkow, I'm showing you what's**
20 **previously been marked as Exhibit 19.**

21 **Is that the one-page piece of paper**
22 **you just referred to?**

23 A. I recall that there was at least
24 two versions of this that came in. And I
25 think both were initialled by Berkenfeld, that

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1 -Lewkow-
2 came and went. So I'm not sure if this was --
3 I don't remember the dating and the time of
4 it.

5 So whether this was the first or
6 the second or some other version, I can't
7 tell. But it looked generally like this, yes.

8 **Q. Whether this is the particular one**
9 **you are referring to, it is a version of**
10 **Exhibit 19 that you were referring to; is that**
11 **correct?**

12 MR. MORAG: Objection to the form.

13 A. It is what I just said. It looks,
14 in general terms, like what I am referring to.

15 **Q. Have you seen this document before?**

16 A. I believe so. Again, I don't
17 remember all the numbers on the page, and so I
18 don't know whether -- which version this was.

19 But certainly I have -- I believe I
20 have seen this document at least recently.
21 Whether I saw this version that night, I have
22 less certainty.

23 **Q. Do you know why Mr. Berkenfeld**
24 **signed the one-page piece of paper that you**
25 **mentioned?**

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1 **-Lewkow-**

2 MR. MORAG: Objection. He's --

3 MR. HUME: Objection. Calls for
4 speculation.

5 A. I can tell you what I recall him
6 saying.

7 **Q. Okay.**

8 A. I think he said something like --
9 the Asset Purchase Agreement had been
10 substantially finalized, and he had come into
11 the room with this piece of paper or a version
12 of this piece of paper, and there was some
13 talk about -- that I don't remember very well,
14 about the categories of assets and liabilities
15 on this piece of paper.

16 And he said, "Well, this is what
17 we're talking about here. I'm going to
18 initial it," or something like that.

19 **Q. Did you ask him why he did that?**

20 **Why he said "This is what we're talking about,**
21 **I'm going to initial it"?**

22 A. No.

23 **Q. Did the one-page piece of paper**
24 **that Mr. Berkenfeld initialled play any role**
25 **in the transaction?**

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1 **-Lewkow-**

2 MR. MORAG: Objection to form.

3 MR. HUME: Objection. Vague.

4 A. As I mentioned, there is a
5 provision in the compensation section that
6 refers to this piece of paper or some version
7 of it, yes.

8 **Q. Was it your understanding that the**
9 **one-page piece of paper Mr. Berkenfeld signed**
10 **also guided the transaction to the extent the**
11 **value of portfolio of assets was concerned?**

12 MR. MORAG: Mr. Gaffey, I'm going
13 to object. You keep using the word
14 "signed," he keeps using the word
15 "initialled."

16 MR. GAFFEY: We are big boys. We
17 both know it means he wrote on the
18 document. Do you want me to say
19 "initialled"?

20 MR. MORAG: If you could.

21 MR. GAFFEY: Sure. Can you read
22 the question back?

23 (Record read as follows:

24 "Question: Was it your understanding
25 that the one-page piece of paper

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1 **-Lewkow-**

2 Mr. Berkenfeld signed also guided the
3 transaction to the extent the value of
4 portfolio of assets was concerned?"

5 **Q. Can you answer that question as if**
6 **I said "initialled"?**

7 A. I need to hear it again. I'm
8 sorry.

9 **Q. Let me rephrase it.**

10 **The one-page piece of paper that**
11 **Mr. Berkenfeld initialled, what role, if any,**
12 **did that play in the transaction? Withdrawn.**

13 **Did the one-page piece of paper**
14 **that Mr. Berkenfeld initialled guide the**
15 **transaction with regard to the value of the**
16 **portfolio of assets transferred?**

17 MR. MORAG: Object to the form.

18 A. I would not -- I don't know what
19 you mean by "guide."

20 **Q. Was it meant to instruct the drafts**
21 **people of the Asset Purchase Agreement as to**
22 **the value of the long position that was**
23 **transferred?**

24 A. The drafts people had already
25 drafted the Agreement. I don't remember

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1 **-Lewkow-**

2 exactly what the status was at the precise
3 time. This was brought in. I don't think it
4 influenced the drafting. If by the draftsmen
5 you mean the lawyers from both sides who were
6 involved in preparation of the document, the
7 Asset Purchase Agreement, I don't believe this
8 guided the drafting of the Agreement, no.

9 **Q. Did anyone from Cleary Gottlieb**
10 **play any role in the preparation of this**
11 **document?**

12 A. No. To the best of my knowledge,
13 no.

14 **Q. Did anyone from Cleary Gottlieb**
15 **play any role in determining the values that**
16 **are shown on this document?**

17 A. No.

18 **Q. Did anyone from Barclays**
19 **participate in the preparation of this**
20 **document?**

21 A. I don't believe, not to my
22 knowledge.

23 **Q. Did anyone from Barclays play any**
24 **role in determining the values shown on this**
25 **document?**

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1 **-Lewkow-**

2 A. I don't -- I don't know what that
3 means. Other than as I testified previously
4 and is set forth in my declaration, you can
5 characterize that in any way you want. But
6 other than that, I don't know of anything
7 relative to the question.

8 **Q. Would you take a look at**
9 **Paragraph 9 of your Declaration?**

10 A. Sure.

11 **Q. Take the time you need to review**
12 **the paragraph to refresh yourself of its**
13 **contents.**

14 **But my question is going to go to**
15 **the portion that begins -- seven lines down --**
16 **"While I was not present for the actual**
17 **discussions between Barclays and Lehman**
18 **Brothers traders..."**

19 A. Let me just reread it.

20 **Q. Sure.**

21 **(Witness reviewing document.)**

22 A. Yes?

23 **Q. Now, to your knowledge, was the**
24 **document I have before you marked as**
25 **Exhibit 19, a product of the discussions**

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1 -Lewkow-
 2 that for some positions where there is no
 3 active market, that other -- other things go
 4 into how a broker-dealer is supposed to mark
 5 their -- their valuation from an accounting
 6 standpoint.

7 **Q. Was it a considered choice of the**
 8 **people who drafted the Asset Purchase**
 9 **Agreement to use the phrase "book value"**
 10 **instead of some other phrase such as "market**
 11 **value"?**

12 MR. HUME: Objection. Vague and
 13 lacks foundation.

14 A. Can I have the question read back,
 15 please?

16 (Record read.)

17 A. I don't know how to answer that
 18 question, final question.

19 Every -- we tried as a group, Weil
 20 Gotshal, Simpson Thacher, Sullivan & Cromwell,
 21 Cleary Gottlieb, tried to do the best we could
 22 in drafting this Agreement under
 23 extraordinarily unusual, difficult
 24 circumstances.

25 I do recall that, that this was one
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1 -Lewkow-
 2 of those final changes that was added in
 3 handwriting, if I had the other version of the
 4 Agreement. And somebody, I believe on
 5 Lehman's side of the table said, suggested we
 6 add in words such as -- to categorize that
 7 what we were talking about were, you know, a
 8 dysfunction of assets. And it was for that
 9 purpose that it was referenced.

10 And I believe that it was first
 11 suggested -- and again, I don't know from
 12 whom, it might have been a Lehman person. It
 13 might have been one of their lawyers. Said,
 14 let's say, with a -- you know, with a
 15 marking -- with marks of 70 billion, or some
 16 words of that sort.

17 And some lawyer -- again, I don't
 18 know on which side. Because this was all
 19 being done in group session issue -- said,
 20 "Well, should we use the word" -- "from a
 21 legal, instead of saying 'marks', should we
 22 use the word 'book value'?"

23 And that's the word that went in.
 24 But I don't think people were trying to draw a
 25 distinction between book value and marks, at
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1 -Lewkow-
 2 least from what this lawyer believed, the
 3 lawyer from Weil, understood "book value" to
 4 mean in the context of financial assets held
 5 by a broker-dealer.

6 **Q. Did anyone from the Barclays side**
 7 **of the table -- by that I'm including Barclays**
 8 **personnel or Cleary, ask for or get any**
 9 **information to indicate whether the value of**
 10 **\$70 billion described in subsection (d) was an**
 11 **accurate description of Lehman's book value**
 12 **for those classes of securities?**

13 MR. MORAG: Object to the form.

14 A. As I told you, as I believe I
 15 testified, I believe we were in a group told
 16 that Lehman was going to remark certain
 17 portfolio assets to reduce them. I assumed
 18 that Lehman had done -- it never occurred to
 19 me, when they talked about "marks", I assumed
 20 that it reflected whatever Lehman had,
 21 therefore, done. And therefore, book value
 22 likewise.

23 **Q. So from what we talked about so**
 24 **far, would it be fair to say that the**
 25 **understanding was that Lehman negotiated to**

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1 -Lewkow-
 2 reduce its marks?

3 MR. MORAG: Object to the form.
 4 A. I'm not going to characterize. I
 5 have -- you're trying to characterize what I
 6 testified to. I stand by the accuracy of my
 7 testimony. But I would not -- I would not --
 8 I would not call that "negotiated." It is
 9 what it is.

10 **Q. Mr. Lewkow, don't get me wrong.**
 11 **I'm not suggesting any lack of credibility of**
 12 **your testimony. What I'm looking for is your**
 13 **best memory of what people talked about at the**
 14 **time?**

15 A. I've given you my best.

16 **Q. Do you remember anything else in**
 17 **terms of discussions concerning the use of the**
 18 **phrase "book value" in subsection (d)?**

19 A. No.

20 **Q. Let me show you what's previously**
 21 **been marked as Exhibit 518. Take a look at**
 22 **the document. My questions will go to the**
 23 **notations on page 7.**

24 MR. HUME: Page which?

25 MR. MORAG: 7. Of the document

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1 -Lewkow-
2 itself, not the Bates number.

3 A. Yup?

4 **Q. And you referred a few moments ago,**
5 **Mr. Lewkow, to the addition of the phrase**
6 **"book value" in a handwritten note, in a**
7 **handwritten annotation. Is this the document**
8 **that you were remembering?**

9 A. It appears to be, yes.

10 **Q. At least I wasn't clear as to**
11 **whether you have a memory as to which side of**
12 **the negotiations added that phrase. Do you**
13 **recall whether it was Lehman or Barclays, or**
14 **do you not recall either side?**

15 A. As I testified, it was a suggestion
16 of someone on the Lehman side that words of
17 that nature be added, yes.

18 **Q. Do you recall who on the Lehman**
19 **side?**

20 A. No. I believe it was not one of
21 their outside lawyers. I believe it was
22 somebody from Lehman itself, but I have no
23 recollection who.

24 **Q. If you can turn back. Actually, I**
25 **created kind of a document mess in front of**

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1 -Lewkow-
2 you.

3 A. It is all right.
4 **Q. Why don't you fold those up? And**
5 **let go back to your Declaration for a minute.**

6 A. Sure.

7 (Witness complying.)

8 **Q. Actually, just before we go back to**
9 **your Declaration?**

10 MR. GAFFEY: Bridgett, can I have
11 25, please?

12 **Q. Mr. Lewkow, I put before you a copy**
13 **of what previously has been marked as**
14 **Exhibit 25.**

15 **You referred a few moments ago to a**
16 **Clarification Letter. Is that the**
17 **Clarification Letter to which you were**
18 **referring?**

19 A. Yes. It appears to be.

20 **Q. What was the purpose of the**
21 **Clarification Letter?**

22 A. The Clarification Letter was, as
23 set forth in the opening paragraph, "To
24 clarify the intent of the parties with respect
25 to certain provisions of the Asset Purchase

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1 -Lewkow-
2 Agreement, supplement in certain respects the
3 agreements of the parties stated therein, and
4 amend the Asset Purchase Agreement in certain
5 respects."

6 **Q. Now, are there particular portions**
7 **of the Agreement that were amended or are**
8 **there particular portions that were**
9 **supplemented or are there particular portions**
10 **that were clarified?**

11 MR. MORAG: Objection to the form.

12 MR. HUME: Objection to the form
13 and that it calls for an intersection
14 of the agreement. And generally
15 Barclays will object to the extent you
16 ask the witness to give legal
17 interpretations of the contract as
18 revealing privilege.

19 A. The answer is -- the document is
20 the document. No one ever tried to say, all
21 right, this clause is a supplement; this
22 clause is an amendment; this clause is -- they
23 are what they are. Certain -- certain things
24 did clarify; certain things amended. No
25 one -- there was no reason -- there was no

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1 -Lewkow-
2 effort to allocate into buckets in this
3 document.

4 **Q. Do you recall if the use of the**
5 **word "amend" was a deliberate drafting choice?**

6 MR. MORAG: Objection.

7 MR. GAFFEY: That's a bad question.

8 Let me withdraw that question.

9 **Q. Do you recall if the word "amend"**
10 **was added at some point during exchanging**
11 **drafts of the Clarification Letter?**

12 A. I would need to see all the drafts
13 to be sure. But my recollection is yes.

14 **Q. Okay. I'm going to show you the**
15 **draft, so I'm not going to ask you to**
16 **speculate and pinpoint.**

17 **Do you recall any discussions**
18 **between the party, that is between Lehman and**
19 **Barclays or their representatives, about**
20 **adding the word "amend" to the Clarification**
21 **Letter?**

22 A. I have a vague recollection that
23 with the very first draft of the Clarification
24 Letter, which was prepared very quickly by
25 someone -- and I don't know which side --

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1 -Lewkow-
 2 after the Asset Purchase Agreement had been
 3 signed and filed with the Court on Wednesday
 4 morning, that the original first draft was a
 5 page or two and it clearly was truly nothing
 6 other than clarification. And so that the
 7 first draft did not use the word "amendment."

8 At some later point, as things got
 9 more complicated and things were happening, it
 10 became -- there was discussion that we should
 11 add the word "amend." That is my
 12 understanding.

13 **Q. Do you recall who was involved in
 14 those discussions?**

15 A. People from Cleary Gottlieb and
 16 people from Weil Gotshal, and probably Simpson
 17 Thacher.

18 **Q. Do you have a more specific memory
 19 of which people? I know it was a pretty
 20 tumultuous week. But do you recall who in
 21 particular was involved in those discussions?**

22 A. It was more in the direct
 23 conversations between -- I think most of the
 24 conversations on the Clarification Letter were
 25 on Barclays side between some combination,

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1 -Lewkow-
 2 Duane McLaughlin, David Leinwand; Robert
 3 Davis; some cases me, but not primarily me;
 4 and various people from Weil Gotshal which I
 5 believe included Robert Messineo, I may be
 6 mispronouncing his name, David Murgio, maybe
 7 Tom Roberts and I'm not sure who else.

8 **Q. Do you know if Harvey Miller was
 9 involved in those discussions?**

10 A. Which discussions? You started --
 11 I probably went too far in answering your
 12 question.

13 **Q. I don't know who led who astray
 14 there.**

15 **The question, the issue is what you
 16 talked about a minute ago --**

17 A. The word "amendment"?

18 **Q. Yes. That it became more complex
 19 and I decided to add the word "amendment,"
 20 whether Mr. Harvey Miller was involved in
 21 those discussions.**

22 A. I don't think -- I don't know what
 23 Mr. Miller was doing talking internally with
 24 his colleagues or with his clients. Did he
 25 participate in the exact wording of that? I

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1 -Lewkow-
 2 don't know. I do have a distinct recollection
 3 of him describing to the Court at the sale
 4 hearing that Friday evening that there were
 5 major changes in the deal.

6 So I can't imagine -- I don't want
 7 to speculate. I do not recall specifically
 8 whether he was involved in adding the word
 9 "amend" in that clause.

10 **Q. Was the Clarification Letter meant
 11 to memorialize those major changes in the
 12 deal?**

13 MR. MORAG: Object to form.

14 A. I'm picking up the Clarification
 15 Letter. It was made to both supplement,
 16 clarify and amend the Asset Purchase
 17 Agreement. And it was intended to be
 18 consistent with what the Court had been told
 19 this Friday evening.

20 **Q. Were you yourself present in court
 21 on the sale hearing on the 19th?**

22 A. I was.

23 MR. MORAG: Yes.

24 MR. GAFFEY: Yes. Okay.

25 **Q. The Clarification Letter,**

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1 -Lewkow-
 2 **Exhibit 25, sets forth certain changes in the
 3 definition of "Purchased Assets" from the
 4 original Asset Purchase Agreement; is that
 5 correct?**

6 MR. HUME: Object to the form.

7 A. Can I look at --

8 **Q. Sure.**

9 A. -- both at the Clarification Letter
 10 and the Asset Purchase Agreement?

11 **Q. Look at whatever you need to look
 12 at.**

13 A. Thank you.

14 (Witness reviewing document.)

15 A. Yes.

16 **Q. While you were present in court,
 17 was Judge Peck told about the changes in the
 18 definition of "Purchased Assets"?**

19 MR. MORAG: Object to the form.

20 A. You can read the transcript as well
 21 as I can, and I think it speaks for itself.

22 I think that what the judge was
 23 told was about the substantive changes in the
 24 deal, major changes in the deal that had been
 25 orally agreed to, is my understanding, by

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1 -Lewkow-
 2 representatives of Lehman and Barclays in a
 3 couple of hours preceding the beginning of the
 4 court hearing.

5 So it does not mean that -- as the
 6 Court was well aware and as the Court noted,
 7 that he did not have the document. The
 8 document did not yet exist but, you know,
 9 major changes were described by Mr. Miller and
 10 Ms. Fife to the Court.

11 **Q. And in Cleary Gottlieb's view at**
 12 **the time, were the changes as described by**
 13 **Mr. Miller and Ms. Fife to the Court at the**
 14 **hearing, accurate and complete?**

15 MR. MORAG: Object to the form.

16 A. Yes.

17 **Q. Were any changes to the transaction**
 18 **discussed or agreed upon after the sale had**
 19 **been concluded, that were incorporated in the**
 20 **Clarification Letter?**

21 MR. MORAG: Object to the form.

22 A. Well, one -- one thing that was
 23 changed that I recall related to the
 24 residential mortgages, the so-called RESIs.

25 The original Asset Purchase

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1 -Lewkow-
 2 Agreement had -- contained a provision that
 3 treated the residential mortgages differently
 4 than any other category of assets and
 5 provided -- can I look at the Agreement?

6 **Q. Sure. I think you might be looking**
 7 **for 1(e) in the definition of "Purchased**
 8 **Assets"?**

9 A. He knows where all the clauses are
 10 here.

11 **Q. Page 6.**

12 **(Witness reviewing document.)**

13 A. Right. So the original Asset
 14 Purchase Agreement provided that the Purchased
 15 Assets that Barclays would be acquiring
 16 included a 50 percent interest in the
 17 positions in the residential mortgage
 18 securities.

19 At some point on Thursday, late
 20 Thursday or early Friday -- I have no
 21 recollection of when it was precisely -- an
 22 amendment No. 1 to the Asset Purchase
 23 Agreement was executed by the parties that was
 24 addressed -- was done to address a problem.

25 There was real uncertainty as to

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1 -Lewkow-
 2 whether the deal could be completed because of
 3 issues that DTC wanted assurances that it was
 4 being -- it would be protected in certain
 5 respects, the details of which I have -- was
 6 not involved in, and that I don't recall great
 7 detail.

8 But the amendment instead provided
 9 that the 50 percent interest that Lehman was
 10 going to keep, as I recall, was instead going
 11 to be delivered -- and I don't remember the --
 12 I have to look at amendment No. 1, but it was
 13 going to be delivered instead to DTC. And if
 14 at the end of some period and the like it
 15 turned out that to secure up to, I believe,
 16 250 million. But again, I would need to look
 17 at amendment No. 1.

18 But that to the extent that there
 19 was some excess available, it would go back to
 20 Lehman. So that Lehman still might end up
 21 having some interest in the RESIs to the
 22 extent that DTC did not need them to protect
 23 it in connection with the Lehman positions.

24 The Court was, as I recall in the
 25 court hearing, Mr. Miller and Ms. Fife made

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1 -Lewkow-
 2 reference to this provision.

3 It turned out that the parties
 4 learned at some point, Friday or Saturday, I
 5 believe, that, in fact, the so-called
 6 residential real estate mortgage securities or
 7 RESIs, that Lehman didn't have such positions
 8 available to transfer to Barclays in the first
 9 place. So there were no such -- and the
 10 reasons were -- and I really don't recall. I
 11 don't know if I ever knew in detail.

12 Some of those positions had already
 13 been traded; they no longer owned them; some,
 14 they may have been pledged to third parties;
 15 some would have involved, to the extent there
 16 were separate double counting with other
 17 securities that were getting outside this
 18 provision. And accordingly, there were no
 19 RESIs of the sort that the Court had been told
 20 about by Mr. Miller or Ms. Fife in the sale
 21 hearing. So that provision was eliminated in
 22 the Clarification Letter which basically
 23 amended the agreement to unwind amendment No.
 24 1.

25 **Q. Just so I'm clear we don't have a**
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1 **-Lewkow-**

2 **disconnect between my question and your**
3 **answer. My question went to changes that were**
4 **made after the sale hearing ended.**

5 **Was that a change that was made**
6 **after the sale hearing ended?**

7 A. I believe so. Because as I said,
8 as I testified, Ms. Fife or Mr. Miller had
9 said, had described the state of the Asset
10 Purchase Agreement as amended by amendment No.
11 1 in the sale hearing. And this Clarification
12 Letter had the provisions that I just
13 described and for the reasons I described.

14 MR. MORAG: I need a bathroom break
15 if that's --

16 MR. GAFFEY: I can't hear you.

17 MR. MORAG: Bathroom break.

18 MR. GAFFEY: Perfect time.

19 (Whereupon, a short recess was
20 taken from 11:22 a.m. to 11:35 a.m.)

21 BY MR. GAFFEY:

22 **Q. Mr. Lewkow, I put in the top of the**
23 **other pile of documents you have in front of**
24 **you what we previously marked as Exhibit 24,**
25 **First Amendment to the Asset Purchase**

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1 **-Lewkow-**

2 Asset Purchase Agreement and at the time of
3 amendment No. 1 and at the time Weil Gotshal
4 described the transaction, changes to the
5 transaction that had been made. And when they
6 described that to the Court, they had believed
7 and Barclays had believed that there was a
8 separate pool available of residential
9 mortgages that over and above other assets
10 Barclays was getting would -- 50 percent of
11 the value of which would be something Barclays
12 was getting.

13 That was what the Court was told.
14 It turned out there weren't any separately
15 identifiable residential assets, residential
16 mortgage asset, RESIs. And so that -- that
17 was a change to reflect the fact that Barclays
18 was not getting something that it had
19 bargained for. But I don't know what you mean
20 by changes after the sale hearing.

21 **Q. Were there any other changes made**
22 **to reflect facets of the deal that were**
23 **different from what the Court had been told,**
24 **apart from this issue you told me about the**
25 **RESIs?**

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1 **-Lewkow-**

2 **Agreement.**

3 **Is that the first amendment you**
4 **were referring to before the break?**

5 A. Yes, it is.

6 **Q. And that was superceded by the**
7 **Clarification Letter?**

8 A. Yes.

9 **Q. Were there any other changes to the**
10 **transaction made after the conclusion of the**
11 **sale hearing that are reflected in the**
12 **Clarification Letter?**

13 MR. MORAG: Object to the form.

14 A. The Clarification Letter was not --
15 I can't deal with words like "after".

16 The Clarification Letter didn't
17 exist at the time of the court hearing. The
18 Clarification Letter did what it did; trying
19 to implement what the Court had been told as
20 well as the clarifications that needed to be
21 made.

22 And the example I gave you before
23 was different from what the Court had been
24 told to the disadvantage, I might add, to
25 Barclays because we had at the time of the

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1 **-Lewkow-**

2 Asset Purchase Agreement and at the time of
3 amendment No. 1 and at the time Weil Gotshal
4 described the transaction, changes to the
5 transaction that had been made. And when they
6 described that to the Court, they had believed
7 and Barclays had believed that there was a
8 separate pool available of residential
9 mortgages that over and above other assets
10 Barclays was getting would -- 50 percent of
11 the value of which would be something Barclays
12 was getting.

13 That was what the Court was told.
14 It turned out there weren't any separately
15 identifiable residential assets, residential
16 mortgage asset, RESIs. And so that -- that
17 was a change to reflect the fact that Barclays
18 was not getting something that it had
19 bargained for. But I don't know what you mean
20 by changes after the sale hearing.

21 **Q. Were there any other changes made**
22 **to reflect facets of the deal that were**
23 **different from what the Court had been told,**
24 **apart from this issue you told me about the**
25 **RESIs?**

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1 **-Lewkow-**

2 MR. MORAG: Objection to form. The
3 feed is not coming through.

4 (Discussion off the record.)

5 (Record read as follows:

6 "Question: Were there any other
7 changes made to reflect facets of the
8 deal that were different from what the
9 Court had been told, apart from this
10 issue you told me about the RESIs?"

11 MR. MORAG: Object to the form.

12 A. I'm struggling. I'm not sure I can
13 answer it. Can I hear it one more time?

14 (Record read as follows:

15 "Question: Were there any other
16 changes made to reflect facets of the
17 deal that were different from what the
18 Court had been told, apart from this
19 issue you told me about the RESIs."

20 A. Do I recall any changes to the deal
21 as they -- other than as I testified, any
22 changes to the deal that were -- from what the
23 Court, the totality of what the Court had been
24 told about the deal as a result of both the
25 Asset Purchase Agreement, the presentations,

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1 -Lewkow-
2 the Wednesday hearing and the Friday hearing,
3 I don't recall any changes to the deal after
4 that, you know, at this -- at this -- at this
5 time.

6 **Q. Take a look, if you would,**
7 **Mr. Lewkow at Paragraph 1, and tell me if**
8 **there are changes to the definition of**
9 **"Purchased Assets" affected by the**
10 **Clarification Letter, changes to the**
11 **definition from the Asset Purchase Agreement?**

12 MR. MORAG: You're asking him --

13 A. Yes.

14 MR. MORAG: -- the Clarification
15 Letter?

16 A. Yes.

17 MR. MORAG: The last thing --

18 A. The answer is yes. There was a
19 change in the definition, that's correct.

20 **Q. Do you know if the change in the**
21 **definition of "Purchased Assets" was brought**
22 **to the Court's attention?**

23 A. There was --

24 MR. MORAG: Object to the form.

25 A. The Court was told about the

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1 -Lewkow-
2 substance of the deal. The Court was not told
3 about clause, actual clause Y or clause Z and
4 the like. So I can't answer that question
5 other than to say, you know, you can read the
6 transcript and I do not believe the words
7 anyone said, and so such and such a clause or
8 such and such a definition will be
9 appropriately changed. That's not the way the
10 hearing went.

11 **Q. So, for example, no one, to your**
12 **knowledge, told the Court that the definition**
13 **of "Purchased Assets" would be changed to now**
14 **include securities owned by LBI and**
15 **transferred to Purchaser or its affiliates**
16 **under the Barclays Repurchase Agreement? I'm**
17 **referring to Paragraph 1A, subsection (ii).**

18 MR. MORAG: Objection to form.

19 A. To the extent that -- a couple of
20 things. First of all, that was not -- I do
21 not believe that was a change in the deal.
22 Barclays had agreed, with certain specified
23 exception, to acquire all of the assets used
24 in the business. Who financed those assets at
25 a given point in time I don't think is

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1 -Lewkow-
2 relevant to that question.

3 At the time the Asset Purchase
4 Agreement was signed, it's my understanding
5 that, you know, a lot of the assets were in
6 the form -- were being financed overnight by
7 the Federal Reserve pursuant to a repo.

8 At some point, Thursday or the
9 like, Barclays had taken the fed out of the
10 repo and provided the financing. But it was
11 the same -- or it should have been, if the
12 assets had been there as had been thought.
13 But those assets, the fact that we added a
14 reference to "repo" doesn't change whether the
15 substance of the transaction changed.

16 **Q. Was there a reason that that**
17 **particular phrase was added to the**
18 **Clarification Letter then?**

19 MR. MORAG: Objection. What
20 particular phrase?

21 A. I think you're going to have to be
22 more specific.

23 **Q. Well, was there discussion back and**
24 **forth between the parties about putting that**
25 **language in the Clarification Letter,**

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1 -Lewkow-
2 referring to the repo assets?

3 A. Can you point me to the exact
4 language, please?

5 **Q. Paragraph 1(a)(ii)(A), "The**
6 **securities owned by LBI and transferred to**
7 **Purchaser or its affiliates under the Barclays**
8 **Repurchase Agreement, as defined below, as**
9 **specified on Schedule A previously delivered**
10 **by Seller and accepted by Purchaser."** That
11 language.

12 A. There were, as you know, a number
13 of drafts that were circulated of the
14 Clarification Letter. And my recollection is
15 that at some point, as lawyers working on the
16 Clarification Letter first learned and then
17 focused on the fact that a lot, most but not
18 all of the assets had been in the -- referred
19 to in the definition of, I believe, "Long
20 positions" in the Asset Purchase Agreement,
21 were now -- had been financed by Barclays at
22 the Feds' request and were in the repo, some
23 lawyer -- and I don't remember whether it was
24 initially from Weil Gotshal or Cleary
25 Gottlieb, but there was agreement that it made

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1 -Lewkow-
2 sense to refer to the repo in this context.

3 **Q. Do you recall when it was that the**
4 **lawyers first learned that assets that had**
5 **been originally described in the long**
6 **positions were, in fact, in the repo? When**
7 **did that happen?**

8 MR. MORAG: Object to the form.

9 A. Yeah, I think -- first of all, I
10 can't answer for all lawyers. That would
11 include the Weil Gotshal lawyers and other
12 lawyers on behalf of...

13 As to Cleary Gottlieb, at some
14 point I believe, at least one of my colleagues
15 that Thursday had heard that there had been --
16 that Barclays had extend -- provided repo
17 financing to Barclays. I'm not sure. It is
18 my understanding none of the details, we had
19 not been involved in that at all. But it was
20 mentioned, and we learned more about it on
21 Friday and over the weekend.

22 But even as -- even as of the Court
23 hearing we knew very little about it.

24 **Q. Did there come a time when you**
25 **learned that the Repurchase Agreement had been**

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1 -Lewkow-
2 **terminated by Barclays?**

3 MR. MORAG: Object to the form.
4 A. There came a time when I learned --
5 when I -- when I learned that -- I'm not sure
6 how I can answer, whether I can answer this
7 without talking about a privileged
8 conversation. Can I have...

9 **Q. Absolutely. Just before you talk**
10 **to your lawyers, I'm focusing on the timing**
11 **here. When did you learn it? We will tread**
12 **carefully so that --**

13 A. When did I learn it requires -- I
14 have to deal with your characterization. Can
15 I hear the question again?

16 **Q. Let me put a question, and then if**
17 **you need to consult, you can do that.**

18 A. Sure.

19 **Q. The question is: Did there come a**
20 **time when you learned that the Repurchase**
21 **Agreement had been terminated by Barclays?**

22 A. There came --

23 MR. MORAG: Objection to form.

24 MR. HUME: I will object and
25 instruct you not to answer to the

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1 -Lewkow-
2 extent it would reveal a privilege from
3 Barclays.

4 MR. GAFFEY: As to when?

5 MR. HUME: Well, you assumed
6 when --

7 MR. GAFFEY: It is attorney --

8 MR. HUME: It was terminated. What
9 does terminated mean?

10 MR. GAFFEY: It means ended.

11 A. It's a legal... If you want to ask
12 the question -- can I talk to counsel for
13 Barclays and my counsel?

14 **Q. Sure. Absolutely.**

15 **(Whereupon, a recess was taken**
16 **from 11:49 a.m. to 11:52 a.m.)**

17 A. Before the break you asked me a
18 question about did there come a time of
19 learning about the termination of the repo.

20 Of course, the repo did terminate,
21 as I understand it, when we closed on Monday,
22 but I assume that's not what you're asking.

23 **Q. It is not.**

24 A. There did come a time over the
25 weekend, I don't recall whether it was

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1 -Lewkow-
2 Saturday or Sunday, where we did learn -- I
3 think I was reminded in preparing for the
4 deposition, that it was -- we initially
5 learned it when we were copied, or not copied
6 and then forwarded on an e-mail from Sullivan
7 & Cromwell who was co-counsel with us for
8 Barclays, and/or to -- to Weil, that there had
9 been an inadvertent notice given to Barclays
10 by folks in the -- I don't know who, but
11 someone at Barclays had sent a notice of
12 termination of the repo at some point, I
13 believe late Friday, and that that was done in
14 error and should be undone.

15 So if that's what you're asking
16 about, you've heard what my recollection is.

17 **Q. It is. Let me show you what's**
18 **previously been marked as Exhibit 27.**

19 **Have you seen that document before,**
20 **sir?**

21 **(Witness reviewing document.)**

22 A. No, I don't believe I have.

23 **Q. You learned about the inadvertent**
24 **termination of the repo over the weekend; is**
25 **that right?**

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1 **-Lewkow-**

2 A. Yes.

3 **Q. Was it the Saturday or the Sunday?**

4 A. I don't know.

5 **Q. Were you involved in any**
6 **discussion, you or anyone else from Cleary or**
7 **Barclays, involved in any discussions from the**
8 **Lehman folks or Weil Gotshal about the**
9 **inadvertent termination of the repo?**

10 A. It is my -- I don't think I
11 personally was, but here as a
12 30(b)(6) witness --

13 **Q. You are Cleary Gottlieb, sir.**

14 A. -- internally. I was perfectly
15 happy not knowing in my life.

16 It is my understanding that
17 following up on the e-mail from Sullivan &
18 Cromwell and the like, that the -- that there
19 may have been some discussions about, you
20 know, implementing this and getting it right
21 to -- to -- because it was, as I -- as I was
22 told at the time and we were told at the time,
23 and as I testified to, it was sent in error.
24 But I don't recall any other discussion.

25 I'm not aware of any other
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1 **-Lewkow-**

2 discussion that Cleary Gottlieb was aware of
3 with the other side on, on this subject.

4 **Q. That's sort of where I'm leading.**

5 **Let me rephrase the question so you'll know**
6 **what it is I'm looking for here.**

7 **What knowledge does Cleary Gottlieb**
8 **have that Weil Gotshal or Lehman knew about**
9 **the termination of the repo, that it had been**
10 **terminated?**

11 A. I believe, as I testified a minute
12 ago, that there was an e-mail that Sullivan &
13 Cromwell on behalf of Barclays sent to Weil
14 Gotshal. And I believe there were some
15 follow-up conversations referencing the fact
16 that there had been an inadvertent notice that
17 had been sent on this subject. Can I look at
18 the Clarification Letter?

19 **Q. Sure. Paragraph 13 is probably**
20 **where you want to go.**

21 A. Fine.

22 **Q. The language in Paragraph 13 was**
23 **supplied by Sullivan & Cromwell, correct?**

24 A. I would have to look at this and
25 compare it to the words in the e-mail. I

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1 **-Lewkow-**

2 don't know the answer to that.

3 **Q. There is a reference in Paragraph**
4 **13 to the Notice of Termination, do you see**
5 **that?**

6 A. Yes.

7 **Q. Is the notice of termination that**
8 **is referred to in Paragraph 13 of the**
9 **Clarification Letter, the notice that we've**
10 **marked as Exhibit 27?**

11 A. Well, it says it is a notice of
12 termination in Paragraph 13 dated
13 September 19. Exhibit 27 that you've shown
14 me, that as I testified I do not believe I've
15 ever seen, it is dated September 19th. It is
16 from Barclays, it is to Lehman, and it says it
17 is a notice of termination. So it appears to
18 be it is, but that's all I can tell you.

19 **Q. Was there any discussion between**
20 **the folks on the Barclays side of the table,**
21 **including Cleary, and the folks on the Lehman**
22 **side of the table including Weil Gotshal,**
23 **about whether there were implications under**
24 **the Bankruptcy Code to the fact that the repo**
25 **had been terminated?**

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1 **-Lewkow-**

2 A. It is my understanding that to the
3 best of Cleary Gottlieb's knowledge, no.

4 **Q. Did Cleary Gottlieb have**
5 **communications with any other person or entity**
6 **outside of your client, outside of Barclays**
7 **and Cleary, about Section 559 of the**
8 **Bankruptcy Code in connection with the**
9 **termination of the repo?**

10 MR. HUME: Outside of any
11 privilege.

12 MR. GAFFEY: Outside of any
13 privilege, yes.

14 A. To the best of my knowledge, no,
15 subject to this caveat. You will be taking my
16 partner's Ed Rosen's deposition. He was
17 involved in the discussions with DTC and other
18 clearance -- clearing entities. And since he
19 was going to be the 30(b)(6) witness on those
20 discussions, I have not consulted him. So as
21 to whether or not there was anything on that
22 point, I do not know the answer on behalf of
23 Cleary Gottlieb. Subject to that, the answer
24 is no.

25 **Q. Were there discussions about 559**
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1 -Lewkow-
2 was discussed.

3 MR. GAFFEY: Actually, no. I --

4 MR. MORAG: You asked for the
5 specific advice.

6 MR. GAFFEY: It is phrased quite
7 carefully not to. That's the point.
8 That's the topic that would be on the
9 privilege log.

10 MR. MORAG: No, I believe it would
11 be the Notice of Termination.

12 MR. GAFFEY: Let me get a yes or no
13 to that. Because I want to see where
14 the instruction not to answer is
15 framed.

16 BY MR. GAFFEY:

17 **Q. Were there discussions between**
18 **Cleary and Barclays concerning the termination**
19 **of the repo? Yes or no.**

20 A. Yes.

21 **Q. When did those discussions take**
22 **place?**

23 A. Some point over Saturday or Sunday.

24 **Q. Were there discussions between**
25 **Barclays and Cleary Gottlieb about**

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1 -Lewkow-
2 **implications under the Bankruptcy Code in**
3 **connection with the termination of the repo?**
4 **Again, yes or no, please.**

5 DI MR. HUME: Again, objection. I
6 instruct the witness not to answer.

7 I don't believe the privilege log
8 subject matter would have to reveal the
9 specific nature of the communication,
10 request for advice under Section Y, Y,
11 Z. I mean --

12 MR. GAFFEY: I understand you are
13 going to assert it. I don't want to
14 take time with the colloquy.

15 MR. MORAG: Hold on one second.

16 THE WITNESS: Can we talk outside?
17 Is that all right?

18 (Whereupon, a recess was taken
19 from 12:07 p.m. to 12:09 p.m.)

20 MR. MORAG: Subject to your
21 agreement that whatever Mr. Lewkow
22 responds will not constitute any waiver
23 of the attorney/client privilege, which
24 you said it wouldn't, but if you
25 confirm that, Mr. Lewkow is prepared to

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1 -Lewkow-
2 answer the question.

3 MR. GAFFEY: Okay.

4 THE WITNESS: Can I hear the
5 question?

6 MR. MORAG: The one that you were
7 prepared to answer.

8 MR. GAFFEY: I rephrased it. But
9 let's read it back.

10 THE WITNESS: Let's hear the last
11 question.

12 (Record read as follows:

13 "Question: Were there discussions
14 between Barclays and Cleary Gottlieb
15 about implications under the Bankruptcy
16 Code in connection with the termination
17 of the repo? Again, yes or no,
18 please.")

19 A. To the best of my knowledge, no.

20 **Q. What needed to be corrected, then,**
21 **in connection with the termination of the**
22 **repo? Do you know?**

23 A. That it was in error. It wasn't
24 supposed to be terminated. I think I was told
25 that it would create a monstrous obligation to

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1 -Lewkow-
2 give notices and so forth and so forth to
3 everyone who was on -- to various party,
4 etcetera. That's all I remember.

5 **Q. Did you or anyone else at Cleary**
6 **Gottlieb have an understanding that upon**
7 **termination of the repo in financing haircut**
8 **over and above the amount advanced would need**
9 **to be repaid into the estate of LBI?**

10 MR. MORAG: Objection. I think you
11 are asking for a legal opinion from
12 this witness.

13 MR. GAFFEY: You are right. Let me
14 withdraw that.

15 **Q. Was there any discussion with**
16 **anyone outside of the circle of Cleary and**
17 **Barclays to the effect that the Bankruptcy**
18 **Code would require the financing haircut in**
19 **the repo to be paid back into the estate over**
20 **and above the amount that Barclays had**
21 **advanced in the Repurchase Agreement?**

22 A. Not to my knowledge.

23 MR. MORAG: Objection to
24 characterization.

25 **Q. Do you know if anyone at Cleary had**
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1 **-Lewkow-**
2 **your recollection as to whether any**
3 **development or event in the negotiations gave**
4 **rise to a decision to add the words**
5 **"supplement and amend"?**

6 MR. MORAG: That was communicated
7 to you.

8 MR. GAFFEY: That Cleary knew
9 about. This is a 30(b)(6) witness.

10 A. I would need to -- let me just
11 think for a minute.

12 I don't recall.

13 **Q. Okay. Within the pile that I gave**
14 **you a moment ago, will you turn to Exhibit 31,**
15 **that's a September 18th -- it is under an**
16 **e-mail.**

17 A. I'm sorry. Which document?

18 **Q. 31. That's under an e-mail from**
19 **Dave Messineo to you dated September 18, 2008,**
20 **11:40 p.m. GMT. Do you see that?**

21 A. Thursday night, yes.

22 MR. MORAG: Can I just make a
23 statement for the record? And I'm not
24 suggesting this is the case. But with
25 respect to Exhibit 34, I just did

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1 **-Lewkow-**

2 MR. MORAG: There are a number of
3 drafts in this case that weren't sent
4 to us.

5 THE WITNESS: But this one, we did
6 receive this one.

7 MR. GAFFEY: My questions have
8 nothing to do with when you got it. If
9 I'm going to get there, I'll try to be
10 very clear about it. So if that's a
11 concern, you raise it.

12 BY MR. GAFFEY:

13 **Q. My question, Mr. Lewkow, goes to**
14 **Paragraph 10 of the draft that is within this**
15 **document.**

16 A. Of 31? Of Exhibit 31?

17 **Q. Of Exhibit 31, yes.**

18 A. Which was late --

19 **Q. The draft is entitled "WGM**
20 **Comments, September 18, 7:30 p.m."**

21 A. Right. Although it was sent to us
22 at 11:40 p.m. on Thursday, September 18th.

23 **Q. GMT, which would put you at 7:40**
24 **p.m. We spent a lot of time on this**
25 **documents, sir.**

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1 **-Lewkow-**

2 notice that as an e-mail emanating from
3 Weil Gotshal, it does not indicate at
4 the bottom that there, in fact, was an
5 attachment. I've often meant to send
6 attachments that I didn't actually
7 attach. And I'm not saying we didn't
8 get it. But Exhibit 31, which also
9 emanates from Weil Gotshal, does
10 indicate below the subject line an
11 attachment.

12 THE WITNESS: We did get this.

13 MR. MORAG: Okay.

14 THE WITNESS: We did get this.

15 MR. GAFFEY: So we don't have to be
16 troubled by that. I get the concern.
17 Do you notice it says "attached
18 Clarification Letter"?

19 MR. MORAG: It says it on the
20 forward.

21 THE WITNESS: It doesn't say it on
22 the lower one, but that may be a
23 difference between the Simpson system
24 and how we attached it and the like.
25 We did receive it.

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1 **-Lewkow-**

2 A. Oh, you did? You're right, I
3 guess.

4 **Q. So if would you take a look at**
5 **Paragraph 10, which has no translation. It is**
6 **Paragraph 10.**

7 A. Yes.

8 **Q. There is a reference to the**
9 **"9/16/08 balance sheet." Do you see that?**

10 A. Yes.

11 **Q. Do you know if that balance sheet**
12 **that's referred to there is the one that was**
13 **marked as Exhibit 19 that I showed you before?**

14 A. Is and was at the time my
15 understanding that what they were referring to
16 here was either the exhibit you mentioned or,
17 as I testified earlier, some variant of that.
18 I do not know it was precisely the one, but
19 something like that exhibit that you just
20 mentioned.

21 **Q. To push that point a bit further,**
22 **if you can take a look at Exhibit 19 and look**
23 **at the lower right-hand corner and see that**
24 **it's got a time stamp on it of 11:18 a.m.**

(Witness reviewing document.)

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1 **-Lewkow-**

2 A. So it does.

3 **Q. And the reference to Paragraph 10**
 4 **is to a balance sheet printed at 11:18 a.m. on**
 5 **9/16/08?**

6 A. Yes, it is.

7 **Q. Does that refresh your recollection**
 8 **in any way?**

9 A. It seems to be.

10 **Q. Does any of this refresh your**
 11 **recollection as to whether there were**
 12 **discussions during the course of the week**
 13 **after the APA had been signed about that**
 14 **balance sheet marked as Exhibit 19?**

15 A. My recollection, and I don't recall
 16 whether we knew this was going to be in the
 17 draft or not, but my recollection is that this
 18 showed up and we didn't think it was
 19 appropriate to start dealing with that
 20 document, which we had not intended to and had
 21 not included as an exhibit to the Asset
 22 Purchase Agreement. And so this did not stay
 23 in the Clarification Letter.

24 **Q. Were there any discussions between**
 25 **Barclays and Cleary Gottlieb on the one hand**

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1 **-Lewkow-**

2 **and Lehman and Weil Gotshal on the other about**
 3 **whether or not to include that sheet as an**
 4 **exhibit to the Asset Purchase Agreement?**

5 A. I believe that during the -- at
 6 some point at the very end of the finalization
 7 of the Asset Purchase Agreement, and it may
 8 have been -- you know, it was a final meeting
 9 at which people tried to finalize the Asset
 10 Purchase Agreement, and that is the meeting at
 11 which a Simpson Thacher associate sat between
 12 me and John Findley of Simpson Thacher and
 13 tried to act as scribner as the combined group
 14 of people around a very large rectangular
 15 table, square table reached agreement on final
 16 changes. And then she entered in handwritten
 17 form, which we have looked at previously or I
 18 testified about earlier today.

19 I believe, I'm not sure, but I
 20 believe it was in that context that someone on
 21 the Lehman side would have raised the idea,
 22 would it make sense to attach this document,
 23 Exhibit 19, or some variant thereof to the
 24 Asset Purchase Agreement. And a decision was
 25 made collectively not to do so.

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1 **-Lewkow-**

2 **Q. What was the basis for the decision**
 3 **made collectively not to do so?**

4 A. The agreement --

5 **Q. I withdraw "basis."**

6 **What was the reason it was decided**
 7 **not to do that?**

8 A. My recollection is that the piece
 9 of paper had been prepared by Lehman and shown
 10 to us and the like, and that there was one
 11 reference to it that was going into the Asset
 12 Purchase Agreement, but that it did not -- the
 13 agreement in the deal was to be embodied in
 14 the Asset Purchase Agreement, and we had not
 15 spent any specific time looking at Exhibit 19
 16 or any variant of it with a view towards
 17 having legal significance and what it might
 18 mean and how it might modify the Asset
 19 Purchase Agreement.

20 The Asset Purchase Agreement was
 21 intended to stand on its own two feet.

22 **Q. Let me ask you to put before you**
 23 **Exhibit 35. It is included in the packet of**
 24 **documents that I gave you.**

25 A. Sure. Yes.

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1 **-Lewkow-**

2 **Q. And Exhibit 35, the first page, has**
 3 **an e-mail from David Murgio at 9:15 p.m. GMT,**
 4 **September 19, 2008 to among others you. And**
 5 **it attaches this, another draft of the**
 6 **Clarification Letter?**

7 A. Correct.

8 **Q. If you would, again, sir, please**
 9 **turn within the document to the blackline**
 10 **section which begins at page 10279864.**

11 A. Yup.

12 **Q. And within the definition of**
 13 **"Purchased Assets," "Excluded Assets" on the**
 14 **first page of that blackline --**

15 A. On the first page? First what?

16 **Q. On the first page of the blackline.**
 17 **Okay? Paragraph 1 of the blackline.**

18 A. Okay. You referred -- I didn't
 19 realize 64 was on all the pages.

20 **Q. It is. It is the first page marked**
 21 **64.**

22 A. Okay.

23 **Q. And it is Paragraph 1, "Purchased**
 24 **Assets."**

25 **The underscored language in that**

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1 -Lewkow-
2 or Barclays in the courtroom. Whether
3 somebody from Weil had them handed a draft or
4 not? I don't know. But certainly no one on
5 our side saw them in the courtroom.

6 **Q. Now, there's a reference in the**
7 **blacklined portion of Paragraph 1 of**
8 **Exhibit 35 to a Schedule A, in that sentence I**
9 **read you about the long position? Do you see**
10 **that?**

11 A. Yes.

12 MR. HUME: "Exhibit A."

13 MR. GAFFEY: No. Schedule A.

14 THE WITNESS: No. It actually says
15 "Exhibit A."

16 **Q. You're actually right.**

17 A. I see that.

18 **Q. Was there any discussion that the**
19 **"Exhibit A" referred to there was the sheet**
20 **marked as Exhibit 19?**

21 A. Well, there was no discussion of
22 this letter that I was aware of. I believe if
23 you look at subsequent drafts, the concept of
24 Exhibit A that dealt with -- it did survive,
25 but it was a very different -- it was not

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1 -Lewkow-
2 anything approaching Exhibit 19.

3 **Q. Now --**

4 A. But I don't know what -- I do not
5 know what Weil Gotshal had in mind, whether
6 they had in mind something like Exhibit 19,
7 but it certainly didn't stay in the
8 agreement -- in the draft of the Clarification
9 Letter.

10 **Q. Now, at this point in the**
11 **chronology, let me be clear about this point,**
12 **the hearing is over, you're back at your**
13 **office, you were told by these Weil lawyers,**
14 **look, this draft doesn't reflect what happened**
15 **in the two or three days before the hearing,**
16 **at that point in time --**

17 A. Can I interrupt you?

18 **Q. Absolutely.**

19 A. I don't think you got my testimony
20 correctly. But it may be that I didn't state
21 it clearly.

22 I'm not sure that when I got back I
23 had a conversation with Weil. I believe I got
24 back and I was told by one of my colleagues
25 that they had been told that by Weil.

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1 -Lewkow-

2 **Q. Okay. You get back to your office,**
3 **you learned that Weil has said, this draft**
4 **won't work because it doesn't reflect the**
5 **changes made in the two or three hours?**

6 A. I might also have been told that, I
7 don't recall, but Tom Roberts or others who
8 were in the courtroom from Weil Gotshal, that
9 they might have said, ignore the stuff that my
10 colleague sent you. I just don't recall.

11 **Q. Do you recall Ms. Fife saying to**
12 **the judge at the sale hearing, we are working**
13 **on a Clarification Letter and we hope to have**
14 **it down here?**

15 A. I believe she did say something
16 along that line, yes.

17 **Q. At that point, during the sale, by**
18 **the time you're certainly in the middle of the**
19 **sale hearing, before that, had there been any**
20 **discussions between Barclays and its**
21 **representatives on the one hand and Lehman and**
22 **its representatives on the other, about**
23 **whether the Clarification Letter would need to**
24 **be submitted to the Court for approval?**

25 MR. MORAG: Objection to the form.

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1 -Lewkow-

2 A. My recollection is that on
3 Wednesday and Thursday the goal had been to
4 have a Clarification Letter that we could
5 submit to the Court. The process was taking a
6 longer time than anyone would have hoped,
7 through no one's fault since everybody
8 operated in good faith to try to get it done.

9 But then on -- so it was already
10 moving slowly. And by Friday, it was my
11 understanding that Lehman and Barclays
12 officials both learned that there were
13 substantial assets that Barclays -- that the
14 agreement contemplated -- the Asset Purchase
15 Agreement contemplated that Barclays was going
16 to receive as part of its acquisition of
17 basically -- issue with only specified
18 exceptions, basically all of the assets of the
19 business. And there were a lot less -- in
20 terms of financial assets that it turned out
21 there were going to be a lot fewer than that
22 Lehman was going to be able to deliver.

23 And that had led to discussions
24 that took place during the day Friday -- I
25 don't know exactly when they started and when

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1 -Lewkow-
 2 they ended. I don't know if they were in
 3 person or over the phone -- between not the
 4 lawyers, between representatives of Barclays
 5 and representatives of Lehman. And that was
 6 going on until very shortly before the Court
 7 hearing began.

8 So while it had been contemplated
 9 the day before that we would try to have a
 10 proposed form of, or maybe an actual form, I
 11 don't recall which, of Clarification Letter to
 12 provide to the Court, that events made that
 13 impossible.

14 **Q. Now, I take it that between the**
 15 **time of this draft marked as Exhibit 35 and**
 16 **the finalizing of the Clarification Letter on**
 17 **Monday, the signing of the Clarification**
 18 **Letter on Monday, other changes are made. We**
 19 **will get to those, but I just want to**
 20 **establish the fact that changes were made over**
 21 **the weekend, correct?**

22 MR. HUME: Objection, vague.

23 Changes to what?

24 MR. GAFFEY: To the Clarification
 25 Letter.

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1 -Lewkow-
 2 A. Changes to the draft Clarification
 3 Letter were made that are reflected in the
 4 final Clarification Letter that was signed,
 5 yes.

6 **Q. And some of those changes were made**
 7 **over the weekend, Saturday the 20th and Sunday**
 8 **the 21st, correct?**

9 A. New drafts were being prepared and
 10 changes to the prior draft were therefore
 11 made, correct.

12 **Q. Now, the discussions that you**
 13 **learned had taken place on Friday morning**
 14 **between non-lawyers for Lehman and Barclays**
 15 **that you referred to a moment ago --**

16 A. Morning or early afternoon. I'm
 17 not sure which.

18 **Q. Was it your understanding that**
 19 **those discussions were to include assets in**
 20 **the deal, to make up for assets that Lehman**
 21 **had not been able to deliver?**

22 MR. MORAG: Objection to form.

23 A. Let me -- I think, I was told --
 24 and now I want to carefully describe how I was
 25 told it. But I was told it twice about the

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1 -Lewkow-
 2 conversation. I'm doing this and I'm looking
 3 at my counsel and Barclays counsel, so they'll
 4 caution me, I think.

5 But I was told substantially the
 6 same. And to the extent there's differences,
 7 I don't remember which is which and what was
 8 the difference. I was told twice about the
 9 results of the conversations that I just
 10 alluded to that took place between Barclays
 11 representatives and Lehman representatives
 12 during the day Friday before the Court
 13 hearing.

14 I arrived at the courthouse shortly
 15 before the Court was supposed to convene for
 16 this case. And while I was still outside the
 17 courtroom, having arrived -- while I was still
 18 outside -- not outside the courtroom, outside
 19 the courthouse. While I was still outside the
 20 Customs House, another car arrived, or taxi
 21 and out came several Barclays representatives,
 22 including Michael Klein.

23 Michael Klein, I may have said,
 24 what's going on or what happened or something
 25 like that --

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1 -Lewkow-
 2 MR. HUME: Why don't I interject.
 3 THE WITNESS: Okay. I don't have
 4 to stay with that.

5 MR. HUME: To the extent --
 6 THE WITNESS: Let me jump ahead.
 7 Let me just jump ahead. Go ahead.
 8 MR. HUME: Just so the record is
 9 clear, to the extent Barclays
 10 representatives communicated to you in
 11 a privileged setting facts that they
 12 later communicated in a way that is not
 13 privileged, you should disclose --

14 THE WITNESS: The latter.
 15 MR. HUME: Be careful, but disclose
 16 only what was not privileged.

17 BY MR. GAFFEY:

18 **Q. On that point, I want you to go**
 19 **back to what was next in a minute. But Klein**
 20 **is there. Who else was there? Anybody non**
 21 **Barclays was there?**

22 A. Not downstairs, no.

23 **Q. So it was Barclays people and you?**

24 A. I had a conversation, and he
 25 summarized the results of the conversation.

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1 -Lewkow-

2 We then all went to the courtroom,
 3 which was a zoo, if I can use that technical
 4 term. And I was near the front of the
 5 courtroom near the well.

6 I was sitting on -- I managed to
 7 get a seat which not many of us did -- on the
 8 side. I can't remember if there was a jury
 9 box in that courtroom or not. If so, I was
 10 just in the chairs just inside what would have
 11 been a jury box and next to the table at which
 12 Weil Gotshal as debtor's counsel was sitting.

13 And there was a conversation that
 14 took place that -- of, you know, somewhere
 15 between four and eight people, I can't -- I
 16 think it was at least five people, six people,
 17 including Michael Klein, myself, Lori Fife,
 18 and a few other people. And it may -- among
 19 those other people may have been -- I don't
 20 think Harvey Miller was one of them. I'm not
 21 100 percent certain. I believe that one of
 22 them may have included, one or more of them
 23 may have been Lehman Brothers business folks
 24 or representatives, or Lazard representatives.
 25 I'm not sure. I don't remember.

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1 -Lewkow-

2 -- specifically specified categories.

3 And of course, as you know,
 4 Barclays was to get under the Asset Purchase
 5 Agreement, except for specified excluded
 6 assets, we were supposed to get all assets
 7 used in the business. But there were certain
 8 assets, including financial assets that were
 9 included within that universe but were also --
 10 and so that Barclays had been led to believe
 11 were going to be delivered. That would be
 12 true whether or not they were also articulated
 13 as within the including language that follows
 14 in the definition of "Purchased Assets."

15 But -- so it's the same universe
 16 either way. But certain of those assets,
 17 which we have been told were among the assets
 18 that Barclays would be getting would not --
 19 were not available to be transferred to us.
 20 That they either did not own or they had
 21 double counted or they were subject to liens
 22 in favor of third parties and they could not
 23 be delivered. And so he reported that.

24 And he said that this was -- and
 25 again, I believe there may have been a Lehman

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1 -Lewkow-

2 The only three people I am sure of
 3 were present were Michael Klein, Lori Fife and
 4 me. There may have been somebody else from
 5 Barclays there as well, like Archie Cox. I
 6 just don't remember.

7 And Michael repeated it enough --
 8 as I said in the beginning, I don't recall
 9 which conversation is which. And they were in
 10 all, to the extent I can recall, they covered
 11 the same topic and were consistent with each
 12 other and I'm sure he used different words and
 13 the like. But he repeated what he had told me
 14 outside 30 or 40 or 50 minutes earlier, or 15
 15 or 10 or whatever.

16 **Q. What did he say?**

17 A. I thought you'd ask that.

18 He reported -- and I had -- he
 19 reported that it turned out that Lehman and
 20 Barclays had both -- officials had both
 21 learned in the prior 24 hours that a number of
 22 categories of assets that Lehman had told
 23 Barclays and agreed before the Asset Purchase
 24 Agreement had been signed and were covered by
 25 the Asset Purchase Agreement, as to categories

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1 -Lewkow-

1 -Lewkow-

2 person standing there, but I can't tell you
 3 who, or a Lazard person, and that he had
 4 created real issues as to whether the deal
 5 could be due -- doable.

6 He went on to describe a number of
 7 things that had come out as further
 8 investigation as to facts as well as further
 9 discussions and negotiations as to what to do,
 10 as to whether this deal could be saved and
 11 whether there would be no deal and there would
 12 be no one to purchase the assets and to
 13 purchase the business and leave the creditors
 14 to a liquidation scenario.

15 But he reported on a number of
 16 things. First of all, that two category of
 17 assets should have been identified that could
 18 have been included in assets that Lehman used
 19 in the business and, therefore, should be
 20 coming to Barclays pursuant to the Asset
 21 Purchase Agreement, which had not been
 22 specifically ever mentioned or focused on by
 23 Barclays. And that those helped to some
 24 extent mitigate the shortfall that I just
 25 described based on what we had known.

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1 -Lewkow-

2 So, we had learned things that
 3 reduced the pool of assets that were worth --
 4 substantially all the assets that we were
 5 getting. But that there were two categories
 6 of assets that were within what we were
 7 getting that we had not focused on and that
 8 Lehman had not told us about were within the
 9 pool of assets that Lehman had available for
 10 transfer, that they could transfer and would
 11 transfer pursuant to the deal.

12 And those, those two categories
 13 were the 15c3-3 reserve account or something
 14 like that. I'm not sure "reserve" is the
 15 right account. And where I was told -- I
 16 remember often this one being told the precise
 17 number, but I don't remember what number it
 18 is. But it was slightly over a billion-seven
 19 in -- and I believe he said in security, but
 20 he may -- he may not have been that specific.

21 And the second was assets in what I
 22 was told was something called the clearance
 23 box about -- again, I may have been given a
 24 more specific number but this one is less
 25 vivid in my mind, of approximately two billion

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1 -Lewkow-

2 of assets, and that these assets were
 3 available and would be transferred by Lehman
 4 as part of the transfer of essentially all the
 5 assets that they were going to be giving us.

6 I was also told of some discussions
 7 of changes that needed to be made to the deal
 8 because that didn't -- the identification of
 9 those assets, of additional -- those assets
 10 that would be transferred as part of the deal
 11 didn't solve by any means the entirety of the
 12 problem that had been learned by both sides as
 13 to other assets that could not be transferred.

14 And that certain changes to the
 15 deal were going to be made.

16 One was -- and that first, another
 17 negative change in the deal from Barclays's
 18 perspective in that there was a -- there was
 19 in the Asset Purchase Agreement a concept
 20 of -- I forgot what the word was. "Retained
 21 cash." It was a very strangely drafted
 22 clause. Because retained cash was Lehman's
 23 cash that Barclays would get and in a sense it
 24 was retained because it would be retained for
 25 use in the business that we were effectively

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1 -Lewkow-

2 purchasing all the assets of, and certain --
 3 and assuming certain specified liabilities.

4 And so I was told that the fact
 5 that Lehman would receive the -- Lehman would
 6 transfer the so-called retained cash was
 7 dropping away and that Barclays would not get
 8 that cash. I believe -- I believe I was told
 9 that they just didn't have free cash sitting
 10 around, but I don't remember precisely what
 11 words were used. I don't remember precisely
 12 what the words were on any, any of these.
 13 This is my recollection and paraphrase of what
 14 he told the group in the well in the courtroom
 15 before the hearing started with a half a dozen
 16 or so people.

17 He also talked about a favorite
 18 topic, the RESIs, and that it turned out --
 19 wait a second. Hold on a second. -- no. I
 20 don't think -- I withdraw that. I don't think
 21 there is anything about the RESIs.

22 He reported that another change
 23 that needed to be made that the parties had
 24 agreed to orally was to eliminate the
 25 provision that I testified about earlier in

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1 -Lewkow-

2 response to some -- some of your questions
 3 that provided that if Barclays sold certain of
 4 the financial positions within one year and
 5 made a profit, that certain amounts of
 6 additional consideration or compensation would
 7 be paid to -- to Lehman, that that provision
 8 had also -- would be deleted.

9 That -- let me just think if there
 10 was anything else that I can recall. That's
 11 my recollection.

12 MR. GAFFEY: Do you want to take a
 13 lunch break?

14 MR. MORAG: Yes. I believe it's
 15 available.

17 (Luncheon recess taken at 1:10 p.m.)

18
19
20
21
22
23
24
25

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1 -Lewkow-
2 A F T E R N O O N S E S S I O N
3 (Time noted: 1:53 p.m.)
4 V I C T O R I . L E W K E W , resumed as a
5 witness and testified as follows:
6 C O N T I N U E D E X A M I N A T I O N B Y
7 M R . G A F F E Y :

8 Q. Mr. Lewkow, before the break you
9 were telling us about a conversation between
10 Michael Klein, Lori Fife, yourself and some
11 others, about discussions that had taken place
12 in the morning before the sale hearing.

13 Was there any discussion between
14 Barclays and its representatives on the one
15 hand, and Lehman and its representatives on
16 the other about what, if anything, of those
17 facts should be told to the judge in the sale
18 hearing?

19 A. First of all, when you say -- you
20 said "morning," I was very careful. I believe
21 it continued until shortly before the hearing
22 started at one o'clock, so I was not limited
23 to the morning. The answer to your question
24 is, no.

25 Q. As you sat through the sale hearing
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1 -Lewkow-
2 and heard the presentations to the Court from
3 the various lawyers who spoke to the judge,
4 was Cleary and Barclays's comfortable that the
5 aspect of the deal that had been discussed in
6 that session prior to the sale hearing were
7 accurately disclosed to the judge?

8 MR. MORAG: Object to the form.
9 Certainly you speak to Cleary. As to
10 Barclays, I'm not sure if that calls
11 for a privilege conversation.

12 MR. GAFFEY: Let me just ask as to
13 Cleary. That's a good point.

14 A. As was my understanding was,
15 typical the debtor's counsel on a sale would
16 normally be the ones who take the -- make the
17 presentation to the Court.

18 THE REPORTER: Can I ask you to
19 please speak up? Thank you.

20 THE WITNESS: I'll try.

21 A. As typical, Weil as counsel for the
22 debtor was making the presentation. Maybe in
23 other context people would have seen a draft
24 of what Lori Fife was going to say or the
25 like. But certainly, since it was such a

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1 -Lewkow-
2 moving target we had, as I told you in your
3 last question, really hadn't had any
4 consultation as to what exactly she and
5 Mr. Miller were going to tell the Court.

6 That having been said, as I sat
7 there, I am, as a member of the Bar, I am -- I
8 do have obligations and certainly if I had
9 thought that I heard something that was
10 inconsistent with my understanding of the deal
11 or omitted information that was obvious that
12 should have been -- would make the description
13 of what the judge heard -- and by "description
14 of what the judge heard," I include everything
15 that he heard Wednesday and everything that
16 was in the Asset Purchase Agreement that he
17 had heard before.

18 If I thought he was being misled, I
19 obviously would have, as was Mr. Granfield who
20 was my partner who I was sitting next to, we
21 would have either, you know, addressed the
22 Court directly or would have talked to Weil
23 Gotshal and asked them to make appropriate
24 other statements to the Court.

25 Q. As I understand the events and
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1 -Lewkow-
2 discussions that Mr. Klein described to you,
3 essentially because Lehman was unable to
4 deliver certain assets within the
5 contemplation of the Asset Purchase Agreement,
6 other assets were substituted for them?

7 MR. MORAG: Objection to form.
8 A. No. I totally -- that is not a
9 correct characterization.

10 Q. What is the correct
11 characterization?

12 A. What I testified.

13 Q. Is it your testimony that the two
14 categories of assets you discussed, 15c3 and
15 the contents of the box, were covered by the
16 original language of the Asset Purchase
17 Agreement?

18 A. I don't want to give you legal
19 advice. But I will point you to the words of
20 the Asset Purchase Agreement that basically
21 says all assets used in the business, other
22 than Excluded Assets, which is a defined term.

23 Q. At the time that you had the
24 conversation with Mr. Klein and Ms. Fife, was
25 it at that point still within the

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-Lewkow-
contemplation of the parties that the
Clarification Letter would be submitted to the
Court?

A. Well, we -- I don't -- the -- it had been the contemplation on Wednesday and Thursday, and the goal had been to, as I testified earlier, to give the Court, to give -- to have that ready to give the judge. It was also the intention at that stage to try to close Friday evening.

And on that sort of scenario, if, in fact, you were there, it would have been probably possible, one would have hoped to have had a Clarification Letter that one could have given to the Court.

It was clear to me, but I don't recall that given what had changed and given that there was a draft that had been served up while we were in court, that -- given that it showed up when it did, I was dubious even before I saw it and before I talked to my colleagues as to whether it did or didn't reflect those discussions given the timing of it.

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-Lewkow-
which -- and this would have been late Sunday night, early hours of Monday morning. I don't know. But it was very late, very late in the game. It might have even been Monday.

In fact, it might have been Monday morning, you know, 5:00, 6:00, 7:00, just shortly before we closed as I think about it. I don't know when it was. But it was late. It wasn't Saturday. It wasn't Sunday morning. It wasn't even Sunday afternoon. And we were very close to, you know, finish. The big issues that people were dealing with were DTC and J.P. Morgan and those sorts of issues were really the big issues that people were facing.

But very late in the process, Harvey Miller saying to a group of -- you know, again, I don't know how many other -- it was a very fluid group of people who would be sitting in what room at what time that weekend. But there were a number of other Weil people and Harvey Miller and me. I don't remember whether any of my colleagues were in the room with me.

And Harvey looked at the assembled
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7 Q. By the end of the sale hearing, no
8 Clarification Letter had been finalized and
9 everybody let to continue their work over the
0 weekend. Was there a point during the weekend
1 when there were conversations between Barclays
2 on the one hand and Lehman on the other
3 including their representatives, about
4 bringing the Clarification Letter to the
5 judge?

MR. MORAG: Objection to the form.

You can answer.

8 A. What I recall, and to me the
9 Clarification Letter was -- it was getting
10 close to being signed. I have a vague
11 recollection, I do have a recollection of
12 sitting in the room -- I did a lot of sitting
13 in the rooms -- with a number of Weil Gotshal
14 lawyers, including Harvey Miller, including
15 one or more of his corporate colleagues in

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8 My recollection is, I've read
9 Mr. Miller's deposition transcript, and he
0 does not mention who -- he mentions a
1 conversation which is, I think, more or less
2 consistent with my recollection, but he
3 doesn't mention that anyone from Cleary
4 Gottlieb, like me, was there.

5 But -- and he may have had more
6 than one, so I have no way of knowing if it's
7 the same conversation.

8 But I do recall that. And he
9 looked around the room and nobody said
10 anything. It was mostly people on his side.
11 So that's the one that -- you know, in
12 connection with the finalization of the
13 Clarification Letter, that conversation took
14 place.

Q. Were any of your bankruptcy

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1 -Lewkow-
 2 facts relating to the residential real estate
 3 mortgage securities which were later learned
 4 were not the facts.

5 And in fact, amendment No. 1 was
 6 signed.

7 **Q. The Asset Purchase Agreement --**

8 A. More accurately, first amendment
 9 was signed.

10 **Q. And the Asset Purchase Agreement
 11 and the first amendment of the Asset Purchase
 12 Agreement, both were submitted to Judge Peck
 13 at the sale hearing. Do you recall that?**

14 A. They were both described. I
 15 assume -- I know the Asset Purchase Agreement
 16 had been submitted in a technical sense,
 17 whether the first amendment was or not, I
 18 assume it was, but I don't know for a fact.

19 **Q. I'll go back to a question I asked
 20 you a few moments ago.**

21 **Given that the Clarification Letter
 22 recites that it amends the Asset Purchase
 23 Agreement, was one of the three verbs that we
 24 talked about, that it "amends" the Asset
 25 Purchase Agreement.**

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1 -Lewkow-
 2 **When Mr. Miller asked whoever was
 3 assembled in that room as to whether anyone
 4 thought it was different than what had been
 5 described to the Court, was there any part of
 6 that discussion that noted that this was an
 7 amendment to the agreement that had been
 8 submitted to the judge?**

9 MR. MORAG: Objection to the form
 10 and to the characterization of his
 11 testimony regarding Mr. Miller's
 12 statement.

13 A. I don't recall. I would note that
 14 Mr. Miller couldn't have been more clear on
 15 Friday to the Court that there were major
 16 changes in the deal. And so the fact that in
 17 part this was to some extent an amendment of
 18 certain aspects of the Asset Purchase
 19 Agreement, I think it was entirely consistent
 20 with what Weil Gotshal told the Court on
 21 Friday.

22 And the Court carefully considered
 23 as I recall the comments made by I think a few
 24 of the creditors and/or the Committee or
 25 somebody, I don't remember who, arguing that

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1 -Lewkow-
 2 he should wait until he had the final document
 3 before he approved the sale. And he discussed
 4 that subject in his statements from the bench
 5 and concluded that he did not need to wait for
 6 a written document.

7 **Q. Was it Cleary's understanding
 8 coming out of the sale hearing that there were
 9 any limitations on what could be included in
 10 the clarification agreement and still be
 11 within the terms of the Sale Order?**

12 MR. MORAG: Objection. I think
 13 that's work product and privilege.
 14 Cleary's understanding? He can't
 15 answer it.

16 MR. GAFFEY: What's the privilege?

17 MR. MORAG: The mental impressions
 18 of a lawyer of what they couldn't --

19 MR. GAFFEY: I just want you to
 20 identify the privilege.

21 MR. MORAG: I said work product and
 22 attorney/client privilege.

23 MR. GAFFEY: Okay.

24 MR. MORAG: To the extent they were
 25 discussed with attorneys.

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1 -Lewkow-

2 **Q. Do you recall any colloquy with the
 3 Court that you witnessed on Friday concerning
 4 any limitations placed on the Clarification
 5 Letter?**

6 A. No. None other than what I
 7 testified to earlier.

8 **Q. Do you recall any restrictions in
 9 the Sale Order itself placing restrictions on
 10 the Clarification Letter?**

11 MR. HUME: Same objection, I
 12 believe.

13 MR. MORAG: I think --

14 MR. HUME: It calls for a legal
 15 interpretation of the Sale Order. That
 16 is a matter in the litigation and
 17 you're asking a lawyer how to interpret
 18 it for you. So I think it's asking for
 19 work product.

20 **Q. Were there any discussions between
 21 Barclays on the one hand including its
 22 representatives, and Lehman on the other
 23 including its representatives, as to whether
 24 there were any limitations in the sail order
 25 as to what could be included in the**

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1 **-Lewkow-**2 **Clarification Letter?**

3 A. Yes. Two conversations. One I
 4 testified to already, the late Sunday night or
 5 late Monday morning conversation with
 6 Mr. Miller. Earlier, I believe it was Sunday,
 7 it was a crazy weekend, I believe it was
 8 Sunday, there was a conversation in the
 9 hallway where the subject of whether certain
 10 circumstances, if we did certain things, would
 11 lead to a change of -- that would require
 12 going back to the Court.

13 **Q. Can you --**

14 A. I may have mischaracterized that.
 15 Go ahead. Ask your next question.

16 **Q. Okay. My obvious question is: How
 17 did you mischaracterize it?**

18 **But tell me what you remember about
 19 that conversation. Who said what to who?**

20 A. So, as I testified earlier on
 21 Friday, one of the things that Lehman Brothers
 22 and Barclays had discovered that among the
 23 Purchased Assets that Barclays was going to
 24 receive in the -- pursuant to its purchase of
 25 substantially all of the assets used in the

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1 **-Lewkow-**

2 business, other than Excluded Assets, that
 3 although there had been very substantial
 4 reductions in what Lehman could deliver, they
 5 also had realized and ascertained that there
 6 were assets that were part of their assets
 7 used in the business that had not previously
 8 been sort of focused on specifically by the
 9 parties, although they were assets of Lehman
 10 used in the business.

11 And I mentioned two -- two
 12 categories of such assets. One was the
 13 so-called 15c3-3 account. And I think I
 14 testified -- I'm not sure, it's been a long
 15 day so far. Maybe not. I may not have
 16 mentioned this. But one of things that
 17 Michael Klein had reported in describing that
 18 was that he had been told by someone on behalf
 19 of Lehman that there was some e-mail around in
 20 which the -- pursuant to which referencing
 21 that someone in the division of market
 22 regulation at the SEC had confirmed that the
 23 15c3-3, the assets in the 15c3-3 could, in
 24 fact, be transferred by Lehman and at some
 25 point, I believe Saturday morning or at some

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1 **-Lewkow-**

2 point Saturday, we asked Weil to see that
 3 agreement.

4 At some later point, I believe on
 5 Sunday, but I couldn't swear to it at this
 6 stage -- at some point, as I was walking in
 7 the hallway of Weil Gotshal, we were in
 8 meetings spread out over a large portion of
 9 Weil Gotshal that was full of purely -- I
 10 believe purely a conference space. There were
 11 lots of meetings going on by different people.
 12 There were people working on the Transition
 13 Services Agreement, there were people dealing
 14 with DTC, there were people just getting ready
 15 to do a closing. Because all of the work had
 16 to be done to be prepared to close, even while
 17 other work was going on. Discussions with
 18 JPMorgan Chase.

19 Anyway, we were with Weil Gotshal
 20 on that floor. And as I was walking down the
 21 floor, there were a number of the Weil
 22 partners standing at this big desk which I
 23 assume was the reception desk, although it
 24 wasn't near the elevators where there was a
 25 big reception desk. But I don't know. It

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1 **-Lewkow-**

2 wasn't clear. Maybe it was for if you needed
 3 secretaries during the conference room. I
 4 don't remember what it was since I had never
 5 been there during a working day, only on
 6 weekend.

7 But standing around this desk were
 8 a number of Weil lawyers. There may have well
 9 been somebody from Lehman or Lazard there as
 10 well, I don't recall. I believe Harvey Miller
 11 was one of the people among the group that was
 12 there for Weil, and they said we have -- you
 13 asked for and we now have, it gave me the
 14 impression they had just received it in the,
 15 you know, minutes or the last hour or two, and
 16 certainly not before then was the impression.
 17 I'm not sure whether they said that or not.
 18 That we now have the e-mail relating to the
 19 15c3-3 account. And they showed it to me.
 20 And I looked at it.

21 And they said that -- first
 22 thing -- well, I noticed and commented on, I
 23 believe I commented on, that it was not as I
 24 had thought from the SEC but merely an
 25 internal Lehman e-mail referencing a

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1 -Lewkow-
 2 conversation with the SEC, with someone on
 3 staff of the SEC.

4 And somebody from Lehman, somebody,
 5 I'm sorry, from Weil said -- and it may have
 6 been Mr. Miller but I don't know. But
 7 somebody from Weil said something like, We
 8 didn't realize that some -- that the account
 9 was not entirely securities but included a
 10 bank account that -- with cash. It was a
 11 major bank. It was one of the things on that
 12 e-mail. So it was -- and as I recall, it was
 13 a million dollars in the bank account that
 14 Lehman maintained with a third party bank.
 15 And 700-plus, 760 odd million of securities
 16 were in that account.

17 And in the course of that, one of
 18 the Lehman people, again, I believe it was
 19 Mr. Miller, but I'm not sure, said, the
 20 question is, does anyone remember exactly what
 21 Ms. Fife -- I don't think Ms. Fife was there
 22 at the time -- told the Court, when she was
 23 discussing the fact that you retain the cash
 24 provision in the Asset Purchase Agreement was
 25 being eliminated, did she say anything that

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1 -Lewkow-
 2 would be inconsistent with us transferring as
 3 part of all the assets of the business, the
 4 15c3-3 account which we now know includes a
 5 bank account.

6 There then followed some further
 7 discussions on a number of -- let me just go
 8 through them.

9 MR. MORAG: If you like.

10 A. Go ahead, ask another question.

11 Q. **Tell me about the further
 12 discussions.**

13 A. So -- and I don't remember in
 14 quite -- again, this was a weekend that was
 15 very -- at the end of the week that had been a
 16 very complex and difficult and weak -- not
 17 just from the financial markets but from
 18 everyone on both sides of this deal who were
 19 trying to see if this deal could get done. So
 20 I don't remember how quickly it got done,
 21 whether it was dragged out over two hours or
 22 only over half an hour.

23 But there were some follow-up
 24 conversations and one of the things -- it may
 25 have even dragged on longer than two hours.

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1 -Lewkow-
 2 Because one of things we asked, or someone
 3 asked is -- I don't know who asked it. Is it
 4 possible, can we get a transcript, can we find
 5 out exactly what Ms. Fife said to the Court to
 6 see whether or not she said something that
 7 would be or might appear to be inconsistent
 8 now that we knew that the 15c3-3 account
 9 included a bank account.

10 All of this is paraphrase. I do
 11 not remember precisely. All of my testimony
 12 where I say what people say is paraphrase. I
 13 don't recall specific words.

14 So some time clearly passed while
 15 that -- but I don't remember how long, while
 16 people investigated that issue. And we were
 17 told at some point -- again, I don't know by
 18 whom -- that it would not be possible to get a
 19 transcript, that no transcript had been
 20 prepared, and that in effect the -- there had
 21 not been a court reporter, shockingly, but it
 22 had been -- there was a tape of the Court
 23 hearing, and that tape, we learned, was locked
 24 up in the courtroom. This was Sunday. I'm
 25 sure it was Sunday. That tape was locked up

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1 -Lewkow-
 2 in the courtroom, in the courthouse, there was
 3 no way to get access to it, and so there would
 4 be no way to obtain a transcript.

5 There was some further discussion;
 6 at different points different people joined
 7 the discussion. Still in the hallway. All of
 8 this took place in the hallway. It may have
 9 been a return to the hallway, but it again
 10 happened in the hallway.

11 And among those who joined the
 12 discussion, and there was more -- in fact, the
 13 original discussion there may have been four
 14 or five or six people, by then there were 10
 15 or 12 people. And included in the further
 16 discussions were from the Barclays side, both
 17 Michael Klein, I believe Archie Cox, I'm not
 18 hundred percent sure and my partner Ed Rosen.

19 By then -- by some -- you know, was
 20 it a second conversation or a third
 21 conversation? I cannot recall. But at some
 22 point we had -- "we" being the Barclays side
 23 talked about --

24 Q. **You shouldn't tell me about that
 25 conversation.**

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-Lewkow-

1 A. I'm trying to figure out --

2 MR. MORAG: There was a
3 communication.

4 A. There was a communication about
5 what we had heard from Harvey Miller and/or
6 others from Weil Gotshal that I described in
7 my testimony, and that was discussed.

8 And putting aside the conversation
9 that I had with the Barclays representatives,
10 when we got back and the discussion that I'm
11 testifying to resumed with the other side, we
12 said, look, if there's no transcript, nobody
13 remembers precisely what he said.

14 And so until we can get a
15 transcript -- because she clearly had talked
16 about cash and there was, you know -- the
17 retained amount was not, was sort of cash that
18 was free and available and not tied up in
19 positions. It was just cash that we had been
20 led to believe at the time of the Asset
21 Purchase Agreement was totally free cash that
22 they had somewhere, and that they were going
23 to transfer as part of the Purchased Assets.

24 And nobody knew precisely how

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-Lewkow-

1 Ms. Fife had, in describing the changes from
2 the deal as reflected in the Asset Purchase
3 Agreement, how precisely she had put it in
4 describing those changes. And she had clearly
5 indicated that that cash wasn't in -- wasn't
6 going to be in the deal but again, nobody knew
7 precisely what it was.

8 And so the alternative, since
9 nobody wanted to -- neither Weil Gotshal nor
10 Lehman nor Barclays nor the lawyers wanted to
11 do anything inconsistent with what the Court
12 had been told, there were two choices
13 available, which was to wait until Monday, get
14 a transcript and see what, in fact, she had
15 been told. And then, if necessary, go back to
16 the Court.

17 There were three choices. Just go
18 back to the Court Monday morning or find
19 another solution. And the other solution was
20 the one that Barclays put on the table of
21 saying, okay, we will take just the securities
22 portion, 760-some-odd million in securities.
23 And in the course of that discussion, Michael
24 Klein said that if -- if for some reason you

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-Lewkow-

1 can't --

2 And there was some conversation by
3 someone at Weil about do we -- do we need SEC
4 approval. And Ed Rosen said no. And they
5 said well -- they wanted to add language that
6 we had no problem with, something saying
7 "subject to applicable law," or something to
8 that nature that ended up in the Clarification
9 Letter.

10 And then Klein said, Look, if we --
11 you know, we're giving up this billion dollars
12 that we thought we were getting as of Friday
13 afternoon and we want to make sure we're
14 getting this 769 million in securities, and so
15 we want to add language that says -- again,
16 I'm paraphrasing, that if we can't get that,
17 you'll get us 769 million of securities of
18 some other securities. That is my
19 recollection.

20 **Q. By the time of the conversation
21 with Mr. Miller on either Sunday night or
22 Monday morning concerning whether anyone
23 thought there were any aspects of the
24 Clarification Letter that required going back**

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-Lewkow-

1 **to the Court, had anybody seen a transcript by
2 then?**

3 A. No.

4 **Q. Had anybody heard the tape by then?**

5 A. No.

6 **Q. Was there any discussion on Monday
7 before the closing concluded of getting the
8 transcript or the tape to make sure the
9 Clarification Letter was consistent with the
10 Court's limitations or instructions?**

11 MR. MORAG: Object to the form.

12 A. There was no -- to my recollection,
13 there was no discussion of that. There was a
14 belief by all of the people that's discussed
15 that it was really important to get this deal
16 closed and announced before the market opened
17 Monday morning. There was -- the market --
18 there had been press announcements that came
19 out after midnight Friday night that had been,
20 I believe, in the Saturday papers or Sunday
21 papers or both, that the Court had approved
22 the sale.

23 And both Lehman and Barclays
24 believed it was really important both from the
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1 -Lewkow-
 2 financial markets perspective and from the
 3 perspective of Barclays of keeping the Lehman
 4 employees -- and I want to come back to the
 5 Lehman employees in a second -- comfortable,
 6 that they should hang around and that there
 7 really was a deal. That there had been a real
 8 hope -- you know, there had been -- I think
 9 some of the press reports might have picked up
 10 the concept from this.

11 I'm not sure of this, but I believe
 12 at least some of the press reports from people
 13 who had been in the courtroom had indicated
 14 that the deal might close over the weekend or
 15 would -- was expected to close over the
 16 weekend.

17 And so there was great concern that
 18 if, in fact, the markets opened Monday morning
 19 and we had not announced a sale, that people
 20 would have thought the deal was falling apart
 21 or had fallen apart, was never going to
 22 happen, or what the heck is the problem out
 23 there. And in the markets that we lived in,
 24 this was in the course of the days when the
 25 papers were full of information talking about

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1 -Lewkow-
 2 people have bought investment banking firms in
 3 the United States, they have often worked out
 4 very badly.

5 Because it is not only what you pay
 6 day one but it's can you make it work? Can
 7 you get the employees to stay? Can you get
 8 them integrated? Can you keep them happy so
 9 as to create value for your shareholders? And
 10 that's true in the best of days.

11 And I think of General Electric,
 12 pretty savvy acquirers as people would think.
 13 They had bought Kidder Peabody, spent a great
 14 deal of money and then spent a lot more money
 15 over the next X years trying to make it work
 16 and had lost a zillion bucks. A zillion is --
 17 I don't know. But they lost a lot of money.
 18 And not just the money they invested but the
 19 money they later put in to try to make it
 20 work.

21 And that's what Barclays was
 22 committing itself to do. So the reaction of
 23 the employees and keeping the employees, in
 24 particular the key employees comfortable that
 25 they assumed -- and I think rightfully so, and

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1 -Lewkow-
 2 whether Morgan Stanley will go under? Will
 3 Goldman Sachs go under? Will we be in a Great
 4 Depression? That was the context in which
 5 this conversation took place.

6 And there was a belief, as I said,
 7 that the employees -- that this would be a
 8 major problem if we didn't announce the deal
 9 that we had closed by Monday morning before
 10 the market opened.

11 I mentioned the employees. The
 12 employees were very important to this deal.
 13 Barclays was not -- you know, all of this
 14 discussion we've had and this testimony has
 15 been -- and I understand that, has been about
 16 the financial assets. Barclays was not doing
 17 this deal to buy a portfolio of financial
 18 assets. Barclays was doing this deal because
 19 it wanted to buy a broker-dealer investment
 20 banking business in the United States and was
 21 prepared to take very substantial risks in
 22 their view in doing that.

23 And I say "very substantial risks"
 24 not focusing particularly on the financial
 25 assets but because of the fact that when

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1 -Lewkow-
 2 they may have known it as a fact, I don't
 3 know, but they assumed that really the
 4 Barclays -- the best Barclays [sic] people,
 5 the ones you most wanted to keep were getting
 6 other inquiries from competitors during the
 7 days, during Monday, during the prior week
 8 over that weekend, etcetera, and it was
 9 important that we keep -- that Barclays be
 10 able to keep the people together.

11 All of that went to the point that
 12 the parties believed, both parties, that it
 13 was really important to try to get this deal
 14 announced before the beginning of the market
 15 opening on Monday morning.

16 **Q. Was the concern about announcing
 17 the closing of the deal before the opening of
 18 the market on Monday morning, a factor in the
 19 decision of the group as to whether or not to
 20 bring the Clarification Letter back to the
 21 judge?**

22 A. No.

23 MR. MORAG: Object to the form.

24 A. The question was, the Court had
 25 approved the the Sale Order without the

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1 -Lewkow-
 2 Clarification Letter. He knew he didn't have
 3 the Clarification Letter.
 4 So the only question that I
 5 believed that Mr. -- the reason Mr. Miller
 6 asked the question, I believe as I described,
 7 was, Okay, what we're doing -- what we are
 8 doing here in the Clarification Letter, is
 9 it -- are we being consistent with what the
 10 Court had approved? Which turned on what the
 11 Court had heard, and heard again on Wednesday,
 12 on Friday in -- in the Asset Purchase
 13 Agreement and the other information that the
 14 Court had, and were we doing anything that was
 15 inconsistent with that.

16 And this was why the question --
 17 so, the question was, the Court clearly knew
 18 that he didn't have to see the Clarification
 19 Letter. The question is had something
 20 happened that was inconsistent with what he
 21 had been told that would change that plan. He
 22 expected us to close over the weekend. That
 23 was what was talked about on Friday.

24 So the only reason we would have to
 25 go back is if something had changed that made

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1 -Lewkow-
 2 it not be -- made a change that was
 3 inconsistent with what he had been told. It
 4 was for that reason in the prior conversation
 5 that there was uncertainty because we weren't
 6 sure what he had said about that to the extent
 7 it might or might not affect the ability to
 8 deliver the cash in that bank account that I
 9 mentioned that was part of the assets of the
 10 15c3-3 account, that since we weren't sure on
 11 that issue, that would have raised the problem
 12 that I testified about.

13 But that was the only time that
 14 there was any discussion of going back. And
 15 even there, the concept was, how do we --
 16 Barclays gave up in its mind a billion dollars
 17 because it was important to get the deal
 18 closed on Monday morning.

19 MR. GAFFEY: I don't have anything
 20 further.

21 Thanks. Thanks for your time,
 22 Mr. Lewkow.

23 THE WITNESS: Can we take a break?
 24 (Whereupon, a recess was taken
 25 from 2:41 p.m. to 2:52 p.m.)

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1 -Lewkow-
 2 EXAMINATION BY
 3 MR. MAGUIRE:
 4 **Q. Mr. Lewkow, as you know, my name is
 5 Bill Maguire, I represent the SIPA Trustee.
 6 Before we start with questions, your counsel
 7 is going to put on the record the topics you
 8 have been designated as representative today.**

9 MR. MORAG: As I think we confirmed
 10 to you separately, Mr. Lewkow and
 11 Mr. Rosen together are responding to
 12 the 30(b)(6) deposition notice served
 13 on Cleary Gottlieb and they have
 14 separately been subpoenaed for their
 15 own personal deposition, which you now
 16 have agreed to complete Mr. Lewkow's
 17 personal deposition along with his
 18 share of the 30(b)(6).

19 With respect to 30(b)(6), the
 20 easiest way for me to explain it is
 21 that Mr. Rosen is addressing issues
 22 relating to the DTC, OCC, and the terms
 23 of the Clarification Letter relating to
 24 exchange-traded derivatives.

25 To the extent there may be overlap
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1 -Lewkow-
 2 with respect to the 15c3-3 issue, then
 3 they're both designated.

4 I think you know from the
 5 declaration, Mr. Rosen is a market
 6 regulation person and Vic is the
 7 mergers and acquisition.

8 That may not be the precise answer,
 9 but if you have any question, you
 10 should certainly ask them of
 11 Mr. Lewkow. If it's Ed, he will tell
 12 you.

13 MR. MAGUIRE: Thank you.
 14 BY MR. MAGUIRE:

15 **Q. Sir, you have seen in the course of
 16 today a number of drafts of the deal document,
 17 many of them with the black lining or red
 18 lining convention.**

19 **What was the practice in terms of
 20 the Cleary team dealing with the Weil team and
 21 the other parties in the course of negotiating
 22 first the APA and then exchanging drafts in
 23 connection with the Clarification Letter?**

24 MR. MORAG: Objection to form.
 25 Vague as to "practice".

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1 -Lewkow-

2 A. This was in a very unusual deal
 3 because in the time period in which it was
 4 done, and I'm going to answer the question
 5 first with regard to the Asset Purchase
 6 Agreement and then with regard to the
 7 clarification.

8 The Asset Purchase Agreement was --
 9 the first draft of the Asset Purchase
 10 Agreement was served up when everyone was
 11 involved. I mean, it doesn't mean there
 12 weren't phone calls back to clients and
 13 others. But all of the lawyers certainly and
 14 parts of the welded teams were sitting in one
 15 or the other of the conference rooms at Lehman
 16 Brothers and the first draft was served up by
 17 Lehman's counsel -- Weil and Simpson Thacher,
 18 I forget who -- that Monday night and it was
 19 signed about 25 hours later.

20 Between the first draft on Monday
 21 night, and Tuesday night when it was signed,
 22 there were -- people were working in the same
 23 room on the document. It doesn't mean someone
 24 didn't take his or her laptop out of the room
 25 for a few minutes and worked on it, but

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1 -Lewkow-

2 back and forth electronically starting some
 3 point Wednesday through the Friday afternoon/
 4 evening one that I testified about earlier.
 5 But starting on Friday when we went to Weil
 6 Gotshal it was an effort to get the
 7 Clarification Letter finalized, consistent
 8 with the intent of the parties, consistent
 9 with, you know, the broad -- the Court's
 10 approval of the deal, including -- you know,
 11 knowing that there was going to be a
 12 Clarification Letter that would lay out the
 13 details, but certainly to avoid anything. To
 14 get it right and to make sure we had a deal
 15 that was -- that reflected the intent and
 16 didn't screw it up.

17 So there were drafts. There may
 18 have been drafts on Saturday and Sunday at
 19 Weil that were not sent electronically. I
 20 have no way of knowing for sure.

21 **Q. Specifically with respect to that**
 22 **Saturday and Sunday, are you aware of any**
 23 **instances where there wasn't an opportunity**
 24 **for people to blackline changes for other**
 25 **people to see?**

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1 -Lewkow-

2 basically people were working on it together.
 3 And I am not sure that every interim draft was
 4 ever sent by e-mail from anyone to anyone else
 5 because people were together.

6 There may have been copies -- this
 7 applies to the Clarification Letter as well --
 8 that were printed out and looked at by people
 9 onsite that were never sent outside of Lehman
 10 or Weil, depending on what we're talking about
 11 the Asset Purchase Agreement or the
 12 Clarification Letter. So it was all done very
 13 quickly. People were there together.

14 As to the Clarification Letter, it
 15 was largely not negotiations. It was trying
 16 to -- and this is true to a large extent in
 17 the Asset Purchase Agreement as well. It was
 18 trying to, you know, get it right. People in
 19 good faith were trying to make sure they
 20 weren't -- given the incredible timeframe that
 21 was going on here, instead of weeks, it was
 22 being done within hours. People were
 23 trying -- on the Clarification Letter, I'm
 24 talking about Saturday and Sunday.

25 There were drafts that were traded
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1 -Lewkow-

2 A. I don't -- I don't know. The
 3 work -- the other thing about it was that, you
 4 know, to some extent, particularly Sunday,
 5 people from various parties who were around
 6 were sitting in the same room working together
 7 on the documents. So it is -- it is certainly
 8 possible that there was one or more drafts
 9 that were not blacklined. I do not know.

10 **Q. Did you have an expectation over**
 11 **the weekend that if any of the folks changed a**
 12 **term, that would either be discussed with the**
 13 **other side or would be blacklined, there would**
 14 **be something to point out that the change had**
 15 **been made?**

16 A. Well, when you say "the other
 17 side," certainly Sunday, is my recollection,
 18 Weil Gotshal is certainly keeping the master.
 19 So we certainly didn't make any changes that
 20 weren't discussed because we didn't have the
 21 ability to do that.

22 **Q. How did you make sure you were**
 23 **aware of all the changes that, that somebody**
 24 **was keeping up with all of them?**

25 A. As I said, there were, and it was
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1 -Lewkow-
 2 mostly not me, but several of my partners were
 3 sitting in a room with Weil Gotshal lawyers
 4 and, you know, intermittently working on --
 5 along with everything else that was going on,
 6 intermittently working towards revising the
 7 document. And it doesn't necessarily mean
 8 that -- so, if something shows up, for
 9 example, in a draft at 8:00 p.m. and I have
 10 no recollection, I can go through it. We have
 11 documented evidence there were particular
 12 drafts that were sent by e-mail.

13 But at 8 p.m. it shows up in the
 14 draft, the prior draft at 2:00 p.m., it
 15 doesn't mean that the change was agreed to by
 16 the party at 8:00 p.m. It might have gone
 17 into somebody's computer at 3:15 p.m. but no
 18 one produced an interim draft.

19 **Q. How many Cleary professionals
 20 worked at Weil that weekend?**

21 A. You know, there were Cleary
 22 professionals, lawyers, dealing with a lot of
 23 different topics. We had a team working on
 24 the Transition Services Agreement, which was
 25 important to both Lehman, the estate as well

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1 -Lewkow-
 2 business would be able to get access to their
 3 accounts. And DTC was an important part of
 4 that. And without that, the whole -- you
 5 know, there would have been an enormous mess
 6 on the hands of the financial system. I don't
 7 remember precisely when I was told precisely
 8 what.

9 **Q. Do you have your Declaration? I
 10 believe the copy was marked Exhibit 613A.**

11 A. Hold on. Let me find it.
 12 (Witness reviewing documents.)

13 A. Yes. I have it.

14 **Q. In Paragraph 3 you describe the
 15 basis for your Declaration?**

16 A. Yes.

17 **Q. You mention your personal
 18 knowledge. You mention your review of
 19 transaction documents. Is that review the
 20 review that you did at the time or did you do
 21 a review of transaction documents for the
 22 purpose of preparing this declaration?**

23 (Witness reviewing document.)

24 A. Where are you looking at, counsel?

25 **Q. First line of Paragraph 3 of your**

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1 -Lewkow-
 2 as to Barclays. We had people dealing with
 3 J.P. Morgan and DTC and OCC. We had people on
 4 some ministerial stuff, but important
 5 ministerial stuff talking -- dealing with
 6 the SEC staff.

7 So we had a lot of people. All
 8 told -- oh, and we had people working on the
 9 closing, trying to prepare for the closing --
 10 I don't know, somewhere between 10 and 15.

11 **Q. You mentioned that you became aware
 12 at some stage that DTC, of which I understand
 13 you to mean the Depository Trust Corporation,
 14 wanted to be protected. How did you become
 15 aware of that?**

16 A. My recollection is that at the
 17 Wednesday hearing on the Sale Order, that
 18 somebody from Wachtell on behalf of DTCC had
 19 said some things that they had contacted our
 20 client and maybe us, and there started to be a
 21 whole issue of whether to use a phrase I had
 22 not heard before "the pipes would be open."

23 Whether or not -- if we closed
 24 Friday night or over the weekend, whether or
 25 not customers and others who were doing

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1 -Lewkow-
 2 **Declaration.**

3 A. Right.

4 **Q. "I base this declaration on my
 5 personal knowledge, review of transaction
 6 documents..."**

7 A. I did, in connection with the
 8 preparation of the declaration, review
 9 certain -- certain -- yeah, the purchase, the
 10 Asset Purchase Agreement and the
 11 clarification.

12 **Q. Anything else?**

13 A. I talked to some of my partners, as
 14 indicated.

15 **Q. Just talking about transaction --**

16 A. But you're talking about documents.
 17 I think to some extent I had looked at some of
 18 the drafts. I mean, I was doing this at the
 19 same time as I was starting to get ready for
 20 this day that I was so much looking forward to
 21 for the deposition.

22 So, you know, I had started looking
 23 at some materials and so -- so I had looked at
 24 some of the drafts, I think, before I signed
 25 the declaration.

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1 -Lewkow-

2 **Q. You mention here the recollection**
3 **of your partners. How did you go about**
4 **collecting the recollection of your partners?**

5 MR. MORAG: Object to the form.

6 A. Can I answer that?

7 MR. GAFFEY: Yes.

8 A. Some of it was over the period of
9 months, most of it was in the context of --
10 you know, in the couple of weeks before I
11 signed this. There were -- we had a few
12 meetings. Some of it was, you know,
13 one-on-one with me and a particular partner.
14 Others were sitting in a room with several of
15 my partners who had worked on the deal
16 together with -- in some cases, Mr. Morag, I
17 think once, I think by phone, at least once
18 with Mr. Hume. So some -- but some of it was
19 just in one-on-one conversations with some of
20 my colleagues.

21 **Q. Can you tell me who of your**
22 **partners you met with to discuss this**
23 **one-on-one?**

24 A. In what timeframe, sir?

25 **Q. In the last few weeks. The period**

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1 -Lewkow-

2 **you referred to in your last answer.**

3 A. In the last few weeks, putting
4 aside Mr. Hume and Mr. Morag, had
5 conversations with Duane McLaughlin, David
6 Leinwand, Lindsee Granfield, to some extent Ed
7 Rosen. I think that's it.

8 **Q. And these are all --**

9 A. Oh, Bob Davis. Robert P. Davis.

10 **Q. And these are all people you met**
11 **one-on-one?**

12 A. No. No. I'm not saying that at
13 all. Some of those folks I only talked about
14 this in larger groups. Some I had one-on-one,
15 some I did maybe some of each.

16 **Q. What about Mr. Rosen?**

17 A. Any conversation I had with him was
18 in the context of there was some -- the
19 context of us working together to prepare his
20 declaration and my declaration. So I had no
21 one-on-one conversations with Ed.

22 **Q. Have you seen Mr. Rosen's**
23 **declaration?**

24 A. I did read it, yes.

25 **Q. Did you see any drafts of his**

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1 -Lewkow-

2 **declaration?**

3 A. Yes.

4 **Q. In any of the meetings that you**
5 **described with your partner, did Mr. Jonathan**
6 **Hughes participate?**

7 A. No, I don't believe he did.

8 **Q. Did you have any meeting with**
9 **Mr. Hughes concerning any of the topics for**
10 **this deposition?**

11 A. In what timeframe?

12 **Q. In the last few weeks.**

13 A. No. Last few weeks, I don't know
14 how many weeks is "a few weeks."

15 MR. MORAG: The question relates to
16 the Deposition Notice to Cleary
17 Gottlieb Steen & Hamilton.

18 A. No.

19 **Q. Did you have any meetings with**
20 **Mr. Hughes?**

21 A. Oh, did anyone talk to Mr. Hughes?

22 Is this addressed to me or --

23 **Q. Yes, you.**

24 A. My personal, did I have any
25 conversations in connection with the

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1 -Lewkow-

2 **declaration?**

3 **Q. In connection with any of the**
4 **topics that are in the Notice for this**
5 **deposition.**

6 A. Can I speak with counsel?

7 **Q. Why don't we leave this for a**
8 **break?**

9 A. Sure.

10 **Q. You can ask and then you can answer**
11 **after that.**

12 A. Sure.

13 **Q. I gather from your earlier**
14 **testimony that you had almost a front row seat**
15 **at the sale hearing on the 19th of September?**

16 A. Yes.

17 **Q. And you understood the purpose of**
18 **that hearing was for the Court to decide**
19 **whether to approve the sale of the business to**
20 **Barclays?**

21 A. Yes.

22 **Q. Did you understand that the Court**
23 **needed to understand the economics of the**
24 **transaction in order to make that**
25 **determination?**

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1 **-Lewkow-**

2 MR. HUME: Objection. Vague.

3 Calls for speculation.

4 MR. MORAG: Objection to form.

5 A. I don't know what you mean by "the
6 economics."

7 **Q. Did you have an understanding that
8 the Court needed to know the overall values of
9 what were being provided to Barclays and what
10 Barclays -- the consideration that Barclays
11 was paying?**

12 A. It was my understanding that the
13 Court needed to know the terms of the deal.
14 The terms were, as set forth in the Asset
15 Purchase Agreement, and as -- with such
16 changes as were described to the Court. That
17 is what I believe was required and took place.

18 **Q. And you had no understanding beyond
19 that as to whether the Court needed to know
20 what the economic value of those terms were?**

21 A. You know, "economic value" is --
22 there's all sorts of -- there are lots of
23 numbers around and the like. There was no --

24 We were buying basically a
25 business. Obviously, everyone knew that

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1 **-Lewkow-**

2 Barclays thought that it was buying a business
3 because they thought in the long run they
4 would make money; that it would be a good
5 investment for them and a good acquisition --
6 taking enormous risks in the course of doing
7 that.

8 So, you know, I don't know what --
9 I don't know what you're getting at,
10 Counselor. But as I said, the Court needed to
11 know, and did know, the terms of the Asset
12 Purchase Agreement and they were told about
13 the material changes that, you know, were
14 going to be made to deal with -- as described
15 to the Court by Weil Gotshal.

16 **Q. Did you have any understanding as
17 to whether the Court, in making its
18 determination, needed to know what the value
19 was of the terms that you described?**

20 MR. MORAG: Mr. Lewkow --

21 THE WITNESS: I think he's asking
22 for my legal --

23 MR. MORAG: To the extent your
24 understanding is based on legal advice
25 that you developed yourself or someone

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1 **-Lewkow-**

2 **(Witness reviewing document.)**

3 A. Read the first sentence?

4 **Q. Yes. The first sentence of
5 Paragraph 17.**

6 A. Uh-huh. Yes.

7 **Q. You refer there to your
8 conversations with your partners?**

9 A. Yes.

10 **Q. What are you referring to?**

11 A. Well, all I'm getting at is that I
12 was signing this declaration and it was my
13 knowledge. But in this sentence, it was
14 not -- as said in one of the introductory
15 paragraphs that you asked me about earlier, I
16 did consult with my -- some of my partners in
17 preparation -- in preparing this declaration.
18 And in particular, I bring attention to the
19 fact that this -- this does -- was not merely
20 in my presence, but I did confirm with my
21 partners that this was -- applied to them as
22 well.

23 **Q. And how did you do that?**

24 A. The conversations I've described to
25 you.

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1 **-Lewkow-**

2 has provided to you within Cleary
3 Gottlieb, I instruct you not to answer.

4 A. I have no -- I'm not going to
5 respond.

6 **Q. Sir, on page 7, Paragraph 11 of
7 your Declaration, you refer to the Lehman
8 Trustees' representatives were present at
9 Weil. Did you meet with any of those
10 representatives?**

11 A. Not one-on-one.

12 **Q. Did you have any discussions with
13 them?**

14 A. They were in the room at various
15 times when discussions took place, and I
16 believe that they had other conversations with
17 the Debtors' representatives.

18 **Q. Do you recall any discussions you
19 had with any particular representative of the
20 Trustee?**

21 A. No.

22 **Q. Sir, if you turn to page 9 of your
23 Declaration. If you take a look at
24 Paragraph 17. If you read that first
25 sentence.**

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1 -Lewkow-

2 **Q. With the partners you've named**
3 **earlier; is that correct?**

4 A. Yes. Yes.

5 **Q. And what did you ask those**
6 **partners?**

7 MR. HUME: I'm going to object to
8 that to the extent it calls for any
9 question not necessary to confirm the
10 facts set forth in the first sentence
11 of Paragraph 17 which are facts
12 relating to non-privileged
13 communications and the like thereof
14 between Cleary and Lehman's lawyers, or
15 Lehman.

16 A. All I --

17 MR. HUME: You are not entitled to
18 ask him every aspect of the
19 conversations he had with his partners
20 just because they confirmed facts.

21 A. The answer is I asked --

22 MR. MAGUIRE: Excuse me. Let me
23 just make the record clear.

24 **Q. I'm only asking you now about the**
25 **conversations you had with your partners for**

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1 -Lewkow-

2 **the purpose of being prepared to prepare your**
3 **Declaration and for your testimony today.**
4 **And specifically what I'm asking**
5 **you is: How did you elicit from your partner**
6 **that no such suggestion had been made? The**
7 **suggestion being what you referred to in**
8 **Paragraph 17.**

9 A. I asked the more likely suspects.

10 **Q. And what did you ask them?**

11 A. Whether or not they had ever heard
12 of -- during those -- those day or two, a
13 suggestion by the other side that the property
14 that was securing the exchange-traded
15 derivatives portion of the business that we
16 were buying was not to be transferred as part
17 of the Purchased Assets.

18 **Q. Who was the person on the Cleary**
19 **team who had principal responsibility for that**
20 **part of the deal?**

21 A. Well, "that part of the deal"? So
22 there were conversations including with the
23 OCC that are referenced here, where -- but
24 those weren't conversations with the other
25 side. Those were conversations with the OCC.

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1 -Lewkow-

2 On that subject, I defer to Ed Rosen. He was
3 certainly involved in the OCC conversations
4 and there may have been others who were
5 involved in those conversations. I was not
6 involved in the OCC conversation.

7 I was involved, as were the people
8 I mentioned earlier, in the Clarification
9 Letter. And those reflected conversations
10 that took place in connection -- by those
11 people who were present in connection at one
12 point or another with the Clarification
13 Letter. And they confirmed, as stated in my
14 declaration, that to their knowledge, none of
15 the -- none of those people, in conversations
16 they were party to, had ever suggested what I
17 say here, what I have in this Paragraph 17.

18 **Q. Did anyone tell you about any**
19 **suggestion or any indication from anyone, that**
20 **any portion of the property held to secure**
21 **Lehman's exchange-traded derivatives was not**
22 **to be transferred to Barclays?**

23 A. No.

24 **Q. Did anyone tell you that any**
25 **language --**

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1 -Lewkow-

2 MR. HUME: Excuse me.
3 (Discussion off the record.)

4 BY MR. MAGUIRE:

5 **Q. Did anyone tell you that any**
6 **language concerning the transfer of margin to**
7 **Barclays had been deleted from a draft of the**
8 **Clarification Letter?**

9 MR. MORAG: Object to the form.

10 A. I have trouble with the way you
11 asked that question. There were a lot of
12 changes that got changed over the weekend to
13 the Clarification Letter to implement the
14 transaction, to clarify the transaction,
15 etcetera.

16 So changes were made in the
17 Clarification Letter, but they were
18 consistent. Insofar as they relate to the
19 margin on the exchange-traded derivatives, it
20 was consistent with our understanding with
21 what the Asset Purchase Agreement had always
22 contemplated.

23 And change X by itself might have
24 one impact that you had to fix by, therefore,
25 also changes -- making change Y, but the net

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1 -Lewkow-
2 result was to maintain exactly the same
3 situation as it had always been, that the
4 entire positions, including the margin
5 associated with those positions was part of
6 the deal.

7 **Q. I don't want to speak in**
8 **generalities here. I want to ask you very**
9 **specific questions. Were you personally made**
10 **aware that language providing for margin,**
11 **transfer of margin to Barclays, was deleted in**
12 **a draft of the Clarification Letter?**

13 MR. MORAG: Objection.

14 Mischaracterizes the evidence.

15 A. You're going to have to point me to
16 something if you have something in mind. I
17 can't -- I'm not sure I know what you're
18 referring to, so I can't answer that question.

19 **Q. Do you have any recollection from**
20 **the work that you did that any reference to**
21 **"margin," to transferring margin to Barclays**
22 **was deleted from a draft of the Clarification**
23 **Letter?**

24 MR. MORAG: Object to the form.

25 Mischaracterizes the evidence.

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1 -Lewkow-
2 remember; whether you have a recollection or
3 whether you do not have a recollection.

4 A. The reason -- look, the reason...

5 **Q. Why don't I rephrase the question**
6 **and you can give me your best recollection?**

7 Sir, do you have a recollection
8 whether in a draft of the Clarification
9 Letter, language concerning a proposed
10 transfer of margin to Barclays was deleted?

11 MR. HUME: I object to the
12 question. To the extent you're asking
13 about a specific provision that was
14 changed, I think you need to show it to
15 the witness in order for the record to
16 be accurate. Otherwise, I think the
17 record is inaccurate.

18 A. We went through a lot of drafts
19 very quickly, and I'll be happy to go through
20 them and answer your question.

21 **Q. Without going through the draft,**
22 **sir, do you have an independent recollection?**

23 A. No.

24 **Q. Did any of the partners to whom you**
25 **spoke, advise you that there had been language**

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1 -Lewkow-
2 A. I don't know what you're referring
3 to, if anything.
4 **Q. Do you have any such recollection,**
5 **sir?**
6 A. Deleting a reference to margin? As
7 I said, there were changes that were made, and
8 one change might have an unintended -- might
9 either -- remember, these were drafts. They
10 weren't signed except for the version that was
11 signed.

12 There may have been changes where
13 something got deleted and then the side effect
14 of it was -- by somebody, rightly or wrongly,
15 and then someone said, Wait a second, the
16 effect of that is to have an impact that
17 wasn't intended. So if that clause gets out,
18 we have to add another clause somewhere else.

19 That happened in a few context in
20 the Clarification Letter. I'm not sure if it
21 happened here. And if so, it may have been
22 fixed. But if so, it was to maintain the
23 deal.

24 **Q. I'm not asking you now what might**
25 **have happened. I'm asking you what you do**

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1 -Lewkow-
2 transferring margin to Barclays that had been
3 deleted from a draft of the Clarification
4 Letter?

5 In any of the conversations that
6 you testified that you had with your partners
7 over the last few weeks?

8 MR. MORAG: Objection. That calls
9 for attorney/client communications and
10 work product. You know that Mr. Rosen
11 is responding to an assertion made in
12 this case and they obviously -- he's
13 already testified they discussed it.

14 MR. MAGUIRE: If you're directing
15 the witness not to answer, that's one
16 thing. Otherwise, I'll ask the witness
17 to answer.

18 DI MR. MORAG: I'm directing him not
19 to answer.

20 BY MR. MAGUIRE:

21 **Q. Sir, the next sentence of Paragraph**
22 **17 starts, "to the contrary." Do you see**
23 **that?**

24 A. Yes.

25 **Q. I'd like to ask you to focus on**

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1 -Lewkow-
 2 people were playing with the -- people had
 3 made a variety of changes to do other things
 4 in the Clarification Letter.
 5 And at some point, language was
 6 added to confirm that it had -- and it was my
 7 understanding this was not at all
 8 controversial, to confirm the intention of the
 9 parties that in the Asset Purchase Agreement,
 10 signed in the Asset Purchase Agreement, that
 11 the intention was that the entire -- that the
 12 positions relating to exchange-traded
 13 derivatives that were being acquired by
 14 Barclays included the margin and in some words
 15 clarifying and making that specifically that
 16 those were within the all assets that were
 17 being purchased, other than Excluded Assets,
 18 that that was included.

19 **Q. And who was involved in those
 20 discussions that you just referred to?**

21 A. I believe one or more -- I may have
 22 been a participant to a very minor extent. I
 23 believe it was one or more of Duane
 24 McLaughlin, Bob Davis and Dave Leinwand and Ed
 25 Rosen. Ed Rosen I think may have been

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1 -Lewkow-
 2 involved as well.
 3 **Q. You said you were involved to a
 4 very minor extent. Can you tell me what you
 5 remember?**
 6 A. What I told you. What I just
 7 testified to.
 8 **Q. With whom did you have discussions
 9 about including margin, you personally? Not
 10 in your representative capacity.**

11 A. To anyone other than my colleagues
 12 or my client?

13 **Q. Yes.**

14 A. Not sure I did.

15 **Q. Can you tell me, please, with whom
 16 Duane McLaughlin had discussions about margin?**

17 MR. HUME: Excuse me. Is
 18 Mr. Lewkow designated as 30(b)(6) on
 19 this topic?

20 MR. MORAG: No, he is not actually.
 21 A. Then you'll have to ask Mr. Rosen.

22 **Q. The names you mentioned, Duane
 23 McLaughlin, Bob Davis, Dave Weinman --**

24 A. It's David Leinwand,
 25 L-e-i-n-w-a-n-d.

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1 -Lewkow-

2 **Q. What is your basis for
 3 understanding that they had discussions about
 4 margin?**

5 A. Because they were involved in the
 6 clarification over that weekend. They were
 7 sitting with Weil Gotshal. Weil Gotshal was
 8 keeping, at least on Sunday, was running the
 9 documents and they were sitting there on and
 10 off talking to Weil Gotshal.

11 And where everyone else was around
 12 in a room that was open to all the folks who
 13 were there that weekend and people came in and
 14 out. And that change was made. So that's my
 15 understanding they were involved.

16 **Q. Did any of the gentlemen you
 17 mentioned, the four people you mentioned, tell
 18 you they had had discussions about margin?**

19 A. They told me that they were -- one
 20 or more of them, and I don't remember which
 21 ones. But I think a couple of them did
 22 indicate that they were -- that this provision
 23 which was added by Weil Gotshal in turning the
 24 documents, reflected conversation they had
 25 with Weil Gotshal.

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1 -Lewkow-

2 **Q. Did they tell you anything more
 3 about that?**

4 MR. HUME: This is all --

5 THE WITNESS: This is all 30(b)(6).

6 MR. HUME: It is either privileged
 7 or 30(b)(6), and you're not on the
 8 30(b)(6) topic. The only reason we're
 9 allowing it to go is based on your
 10 initial reference there to Paragraph 17
 11 of the declaration, which I assume is
 12 what you're asking.

13 MR. MAGUIRE: Well, I would like to
 14 hear what the witness was told about
 15 the conversations with Weil.

16 **Q. First of all, can you tell me who
 17 of the four told you that they had a
 18 conversation with Weil?**

19 MR. MORAG: Objection. Asked and
 20 answered. He just told you.

21 A. I said, I don't recall.

22 **Q. Can you tell me, what did they tell
 23 you about the conversation other than they had
 24 a conversation with Weil about margin?**

25 A. My recollection is that there --

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1 -Lewkow-
 2 their -- either as a result of other changes
 3 that had been made -- other things in the
 4 Clarification Letter or as a result of the OCC
 5 process, that somebody had raised the issue of
 6 whether it was still clear, as it had been in
 7 the Asset Purchase Agreement that there was
 8 any doubt on the subject and that Weil agreed
 9 that was the intention and they put it in.
 10 But I don't remember specifically. This was
 11 not negotiated is my understanding. It was
 12 agreed it went in because it was reflecting
 13 the transaction as it had always been --
 14 "always" meaning from the signing of the Asset
 15 Purchase Agreement onward, had always been
 16 understood.

17 **Q. Do you know any of the details of**
 18 **what the Cleary representatives told Weil in**
 19 **this discussion --**

20 MR. MORAG: Objection. Asked and
 21 answered.

22 **Q. -- about the margin?**

23 A. I told you everything I recollect,
 24 sir.

25 **Q. You described earlier a hallway**

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1 -Lewkow-
 2 **conversation that you had which started with**
 3 **your reviewing an internal Lehman e-mail. Do**
 4 **you recall that testimony, sir?**

5 A. An internal Lehman Brothers'
 6 e-mail?

7 **Q. Yes.**

8 A. Yes.

9 MR. GAFFEY: I'll show you a
 10 document which we will mark as
 11 Exhibit 615A which is an e-mail from
 12 Joel Potenciano to a list of people, a
 13 long list of people, starting with
 14 Joseph Abate dated Thursday,
 15 September 18, 2008.

16 (Deposition Exhibit, 615A, 2PP
 17 9/18/08 e-mail from J. Potenciano to
 18 distribution re: Preliminary 15c3-3
 19 reserve lock-up as of 9/17/08, marked
 20 for identification, as of this date.)

21 **Q. If you can take whatever time you**
 22 **need, sir, to examine that document and tell**
 23 **me whether you've ever seen it before.**

24 **(Witness reviewing document.)**

25 A. Well, it may be the printing. But
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1 -Lewkow-
 2 I recall seeing a document that -- that didn't
 3 have an attachment, the second page -- well,
 4 wait a second. I never saw this document.
 5 I've never seen this document. This is
 6 different than what I've seen.

7 **Q. You described in some detail the**
 8 **hallway conversation. Is there anything that**
 9 **you recall of that conversation that you did**
 10 **not describe in your prior testimony?**

11 A. Give me a minute, please.

12 I gave a long answer. I don't
 13 remember precisely what I said. Nothing
 14 occurs to me at the moment that I did not
 15 include in that subject.

16 **Q. Prior to that hallway conversation,**
 17 **did you have an understanding of what a 15c3-3**
 18 **account was?**

19 A. As I testified this morning, until
 20 that Friday afternoon -- this hallway
 21 conversation was on Sunday. Until Friday
 22 afternoon, I had -- I may have heard of it.
 23 But if so, it never registered in my
 24 consciousness. Prior to that, I really did
 25 not know anything about 15c3-3 accounts prior

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1 -Lewkow-
 2 to Friday.

3 **Q. In the course of the hallway**
 4 **conversation, did anyone describe what a 15c3**
 5 **account was?**

6 A. At some point between Friday
 7 afternoon and Sunday, I heard a little bit --
 8 I don't remember from whom -- about 15c3-3
 9 accounts, and that it would -- that they were,
 10 you know, accounts maintained by a
 11 broker-dealer of their own assets, with their
 12 assets, but that for regulatory reasons were
 13 segregated in connection with the company's --
 14 the broker-dealers to protect the interest of
 15 clients of the broker-dealer.

16 **Q. You understood that the assets were**
 17 **restricted to ensure that customer property**
 18 **could be returned to the customers?**

19 MR. MORAG: Object to the form.

20 A. Yeah, I used the word "segregated."
 21 There were applicable -- I knew there were
 22 applicable SEC rules. Because if you could
 23 merely -- if tomorrow Goldman Sachs could take
 24 its 15c3-3 account and just spend it all on
 25 bonuses, if you will, that would eliminate the

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1 -Lewkow-
 2 protection that the rule is aimed at doing.
 3 I don't know if I would use the
 4 word you used, but I recognized that there
 5 were regulatory implications about the ability
 6 to take the money out that were tied to the
 7 accounts of the customers who were being
 8 directly or indirectly -- I'm not sure the
 9 details of how it works -- to provide some
 10 level of effort to the customers and clients.

11 **Q. Was there a discussion of the**
 12 **regulatory constraints on Lehman in releasing**
 13 **funds from its c3 account?**

14 A. As I testified this morning, I
 15 believe that when the discussion took place,
 16 somebody from Weil -- none of the Weil people
 17 were experts at all on 15c3-3 accounts as they
 18 all said at the time. One of them made that
 19 point. And on our side, we did have someone
 20 who did have real expertise, Ed Rosen, who was
 21 participating at least by the latter stages in
 22 discussions. So somebody from Weil had raised
 23 the question of, "Gee, as far as we at Weil
 24 know, maybe we need approval from the SEC to
 25 do this. And Rosen said, "You don't need

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1 -Lewkow-
 2 approval to do it, there is no approval
 3 requirement."
 4 And they said, "Well, this is an
 5 account that we gather -- you know, we know is
 6 required as a regulatory matter. Let's at
 7 least say --" they may have proposed saying,
 8 you know, "subject to SEC approval," I don't
 9 remember if they used those words.

10 And Ed said, "No, that's wrong
 11 because there is no need for SEC approval."
 12 And they said, "Can we say something like
 13 'subject to applicable law'?" Or something
 14 like that. And since we tried to comply with
 15 the SEC laws and rules, Ed did not object to
 16 that, and language to that effect went into
 17 the document.

18 **Q. Did anyone explain that only an**
 19 **amount in excess of a c3 calculation is**
 20 **permitted to be removed from such a restricted**
 21 **account?**

22 MR. MORAG: Objection to form.
 23 Answer with respect to anything you
 24 were told from the Lehman side.

25 A. I believe that 15 -- as I

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1 -Lewkow-
 2 understood 15c3-3 with total non-expertise, it
 3 is a requirement that you maintain certain
 4 reserves in a segregated account to protect
 5 the interest of customers. And I don't
 6 recall -- I was aware certainly that basically
 7 Barclays was assuming the accounts. So I'm
 8 not sure whether there was a difference
 9 between an excess and a non-excess given that
 10 I don't think Lehman, as a broker-dealer, was
 11 going to continue to have customer accounts.
 12 But that's all I can say on that subject.

13 **Q. In that hallway conversation,**
 14 **Mr. Rosen did not say that only the excess**
 15 **could be transferred?**

16 MR. MORAG: Is that a question?

17 MR. MAGUIRE: Yes.

18 A. I don't remember the word "excess."
 19 You'll have to ask Mr. Rosen.

20 **Q. Did Mr. Rosen say anything about a**
 21 **deficiency in the c3 account?**

22 A. There was no discussion of
 23 deficiency of the c3 account. Lehman Brothers
 24 on Friday -- I was told that Lehman Brothers
 25 on Friday had identified this account as

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1 -Lewkow-
 2 assets that consistent with the Asset Purchase
 3 Agreement that required the delivery of all
 4 assets used in the business other than
 5 specifically excluded assets. But they
 6 identified this account for the first time on
 7 Friday as assets that were Lehman, that Lehman
 8 could deliver to Barclays as the purchaser.
 9 And therefore, certainly no one had a
 10 discussion of the deficiency.

11 **Q. Did anyone have any discussion**
 12 **about a shortfall in customer property?**

13 A. I don't know what you mean by
 14 "shortfall" as opposed to "deficiency." To me
 15 it sounds the same. I don't -- no.

16 **Q. Did anyone discuss where Lehman**
 17 **would get the property to pay Barclays if it**
 18 **was unable, could not get approval, to remove**
 19 **the funds from the c3 account?**

20 A. I think --

21 MR. MORAG: Object to the form of
 22 the question, to the word "funds." I
 23 think there has been testimony what was
 24 agreed to be transferred was
 25 securities.

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1 -Lewkow-

2 A. As I testified earlier, in the
 3 course of this discussion, Mr. Klein said in
 4 words or in substance that, okay, we will take
 5 the billion dollars that are sitting in a bank
 6 in cash, deposited with the bank but we want
 7 to get the 760-odd million. And if you can't
 8 get it there, we want to get it some other
 9 way. And that's my recollection of the
 10 discussion.

11 **Q. In the middle of Paragraph 20 of**
 12 **your Declaration, page 10, after you referred**
 13 **to Mr. Klein, you say, "This was agreed to by**
 14 **representatives of Lehman." Do you see that?**

15 A. Yes.

16 **Q. What do you mean by "this"?**

17 A. That if the lead -- if there were
 18 legal constraints preventing transfer of the
 19 rule 15c3-3 account assets, Barclays would
 20 receive substitute assets.

21 **Q. And who were the Lehman**
 22 **representatives who agreed to that?**

23 A. At a minimum, it included the Weil
 24 group that was standing there. I don't know
 25 what authority they had. As I said, this took

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1 -Lewkow-

2 then it went -- later in the day it got into a
 3 draft. So certainly -- I don't know what
 4 kind -- if Lehman people were not present at
 5 that moment, I assume Weil either had
 6 authority or obtained authority to include
 7 that in. But you'll have to ask them.

8 **Q. How did Mr. Miller signify his**
 9 **agreement to this?**

10 A. He said -- somebody from Weil said,
 11 okay, or yes, or that's not a problem. I
 12 don't know what words he used.

13 **Q. Who was the person from Weil who**
 14 **said one of those variety of comments?**

15 A. I don't -- I don't remember.

16 **Q. And did you understand that person**
 17 **from Weil to be agreeing that Barclays would**
 18 **get \$769 million unconditionally as part of**
 19 **the sale as opposed to simply agreeing to the**
 20 **inclusion of the language proposed "to the**
 21 **extent permitted by applicable law"?**

22 A. No, I think the phrase -- my
 23 understanding at the time and I think what we
 24 were all talking about was my understanding
 25 was the reason "to the extent permitted by

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1 -Lewkow-

2 place over a couple of conversations, I think.
 3 At a minimum, it included them.

4 I actually believed that somebody
 5 from Lehman may have been with them during
 6 this discussion, but I don't have a distinct
 7 recollection of that. As I said, the group
 8 had gotten larger during the course of these
 9 two or three hallway conversations. But I --
 10 you know, certainly I leave it to Weil
 11 Gotshal.

12 You know, I have enormous respect
 13 for Mr. Miller and Mr. Roberts and Ms. Fife
 14 and the other lawyers, and Mr. Masaneo, and
 15 the other lawyers who were there doing their
 16 best to represent their clients. They know
 17 what things they need to go back to and not go
 18 back to.

19 So if there was no one from Lehman
 20 Brothers there -- I just don't recall if
 21 someone from Lehman was there at that moment
 22 or not. But Lehman -- Lehman's counsel -- and
 23 there may have been somebody from Simpson
 24 Thacher there as well. May well have been.

25 Lehman's counsel agreed to it. And

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1 -Lewkow-

2 applicable law" or words of that nature were
 3 going to get added to the language was because
 4 of the technical rules governing 15c3-3 that
 5 the Weil lawyers had conceded they were not
 6 experts on.

7 I had absolutely no expectation,
 8 and it was never suggested, to my
 9 recollection, that the limitation "to the
 10 extent permitted by applicable law" was a
 11 limitation on the broader statement: if we
 12 can't transfer that, we will transfer
 13 something else. That was not my
 14 understanding.

15 **Q. Did you do anything to confirm your**
 16 **understanding that when Weil, somebody at Weil**
 17 **said "okay" or "yes", they were agreeing to**
 18 **make this obligation unconditional as opposed**
 19 **to simply agreeing to the inclusion of the**
 20 **language proposed "to the extent permitted by**
 21 **applicable law"?**

22 A. The language was drafted to reflect
 23 the conversation that took place in the
 24 hallway and was included in the Clarification
 25 Letter. I believe there is nothing else to

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1 -Lewkow-
 2 say. People agreed to a principle, it got
 3 reflected in the Clarification Letter.
 4 **Q. A couple of lines down in your**
 5 **Declaration, you refer to some other language,**
 6 **it's the phrase you referred to "are**
 7 **securities of substantially the same nature**
 8 **and value." Do you see that?**

9 A. Yes.

10 **Q. Who proposed that language?**

11 A. I described the agreement, the oral
 12 agreement that was reached in the hallway. It
 13 was then left to the folks focusing on pushing
 14 the paper forward on the Clarification Letter,
 15 which included both Cleary folks and Weil
 16 folks and there were others involved, or at
 17 least in the room at some time during that
 18 conversation.

19 And I believe that somebody did a
 20 first version of it that referred to -- of the
 21 same nature and didn't include "and value."
 22 And then someone on the Barclays' team said,
 23 "Well, that doesn't work because that
 24 wouldn't -- what does that mean?" So the
 25 words "and value" got put in.

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1 -Lewkow-
 2 **Q. Did anyone at Barclays go back and**
 3 **ask anyone at Weil what that meant?**
 4 A. What what meant, sorry?
 5 **Q. The words "are securities of**
 6 **substantially the same nature"; what was meant**
 7 **by that language?**

8 A. With all due respect, when people
 9 are trying to write a document and trying to
 10 get a deal done under incredibly difficult
 11 circumstances and somebody writes a language
 12 that on its face does not work to solve the
 13 problem that had been discussed and agreed to
 14 on all matters by people to solve a problem,
 15 and it was obvious that to say "the same
 16 nature" could mean one dollar worth of
 17 securities, that would have been an idiotic
 18 remark.

19 We had no reason to believe that
 20 Weil was trying to sabotage the deal that
 21 their colleagues had agreed to. And so to my
 22 understanding, someone said, "You got to add
 23 the word 'and value,'" and they said "Of
 24 course," and it happened.

25 **Q. From whom did you get that**

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1 **-Lewkow-**
 2 **understanding?**
 3 A. From my colleagues, Mr. Davis,
 4 Mr. McLaughlin and Mr. Leinwand and one or
 5 more of that group.

6 MR. HUME: Can we take a short
 7 break?

8 THE WITNESS: Yes, I can use a
 9 bathroom break. Thank you.

10 (Whereupon, a recess was taken
 11 from 3:58 p.m. to 4:24 p.m.)

12 BY MR. MAGUIRE:

13 **Q. Sir, over the course of the weekend**
 14 **prior to closing, did you participate in any**
 15 **meetings with the Creditors Committee?**

16 A. No. Let me add to that. That
 17 isn't to say that one or more members of the
 18 Creditors Committee may have been present when
 19 meetings took place. But I certainly did not
 20 have any -- to my knowledge, any particular
 21 meetings with the Creditors Committee.

22 **Q. Let me show you a document that's**
 23 **previously been marked as Exhibit 451.**

24 A. I got it.

25 **Q. Do you recognize that document,**

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1 **-Lewkow-**
 2 **sir?**
 3 A. Yes.
 4 **Q. What is it?**
 5 A. This looks like, and this is the
 6 document, I'm quite sure, that I was shown and
 7 you asked me about before. This is the
 8 letter -- the internal Lehman Brothers' e-mail
 9 that I was shown that Sunday by Weil Gotshal
 10 with respect to the 15c3-3 reserve account.

11 **Q. And you mentioned that a bank had a**
 12 **billion dollars of cash. Are you referring to**
 13 **the cash with Wells Fargo?**

14 A. Yes. On deposit with Wells Fargo.

15 **Q. So you understand this was, taking**
 16 **the billion dollars in cash out of the**
 17 **transaction left \$769 million in qualified**
 18 **securities?**

19 A. Yes.

20 **Q. And that was in the subject of the**
 21 **provision that was put in the Clarification**
 22 **Letter?**

23 A. Yes.

24 **Q. You'll see the reference here to**
 25 **Mike Macchiaroli?**

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1 **-Lewkow-**

2 A. Yes.

3 **Q. Did anyone from Barclays have any**
4 **discussions with Mr. Macchiaroli prior to the**
5 **closing concerning this issue?**

6 MR. MORAG: To your knowledge.

7 A. Not to my knowledge.

8 **Q. Did anyone from Barclays have any**
9 **discussion with anyone at the SEC concerning**
10 **the c3 account?**

11 A. Not to my knowledge.

12 **Q. I'll show you a document we**
13 **previously marked as Exhibit 49.**

14 A. Yes.

15 **Q. Do you know whether you've seen**
16 **this before?**

17 A. Yes, I have.

18 **Q. When did you first see it?**

19 A. At or about the time it was sent.

20 **Q. When did you last see it?**

21 A. I think in preparation for this
22 deposition, it's -- I didn't study it closely.
23 But I did quickly look at the various drafts
24 that my counsel had provided me.

25 **Q. And you understand this is a**

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1 **-Lewkow-**

2 **revised Clarification Letter that Mr. Leinwand**
3 **sent around on Saturday, September 20th?**

4 A. Revised draft Clarification Letter
5 that Mr. Leinwand sent around at --
6 late Saturday night. It went out at
7 11:13 p.m. Yes.

8 **Q. And he circulated, the attachment**
9 **is both a clean version and a blackline?**

10 A. That is correct.

11 **Q. The blackline is about halfway**
12 **through the document and it has at the top**
13 **"Cleary Gottlieb Comments." Do you see that?**

14 A. Yes.

15 **Q. If you turn to the second page of**
16 **that, sir.**

17 A. Of the blacklined version?

18 **Q. Yes.**

19 A. Yes.

20 **Q. You will see there is a blackline**
21 **in section (d), the second half of the page.**

22 A. Yes.

23 **Q. And if you scroll down about**
24 **two-thirds of the way down, you'll see a**
25 **reference to a Section A. Do you see that?**

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1 **-Lewkow-**

2 A. I see it.

3 **Q. And the language reads, "By or on**
4 **behalf of LBI pursuant to Rule 15c3-3 of the**
5 **Securities Exchange Act of 1934, or**
6 **otherwise..." Do you see that?**

7 A. I do.

8 **Q. And then it goes on to say, "Are by**
9 **or on behalf of any clearing agency or any**
10 **clearing organization to collateralize,**
11 **guarantee, secure, whether as margin,**
12 **guarantee funds, deposits or in any other**
13 **form." Do you see that that language, sir?**

14 A. I do.

15 **Q. Now, were you aware that that**
16 **language was deleted from the next draft, at**
17 **least a subsequent draft of the Clarification**
18 **Letter?**

19 MR. MORAG: Objection to the form
20 of the question; the characterization
21 "delete."

22 A. I believe so, yes.

23 **Q. I'll show you a document that we'll**
24 **mark as 616A, which is Bates stamped**
25 **WGM-LEHMAN-E 00006236 through 6264?**

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1 **-Lewkow-**

2 **(Deposition Exhibit 616A, 9/22/08**
3 **e-mail from R. Messineo re:**
4 **Lehman-Barclays, WGM-LEHMAN-E**
5 **00006236-6264, marked for**
6 **identification, as of this date.)**

7 **(Witness reviewing document.)**

8 **Q. Take whatever time you need to**
9 **review the document, sir. What I want to know**
10 **is whether you have ever seen it before, this**
11 **or any part of the document?**

12 A. Well, I certainly never saw the
13 cover e-mail from Mr. Messineo to your
14 colleagues at Hughes Hubbard. I'm just trying
15 to figure out the timing.

16 **(Witness reviewing document.)**

17 A. May I look at the other -- the
18 draft I was furnished this morning in
19 connection with this deposition to see if this
20 looks the same as the one that I've seen with
21 a different transmittal e-mail?

22 **Q. Feel free to look at any of the --**

23 A. Thank you.

24 **Q. -- exhibits there.**

25 MR. MORAG: The 28 and the 37 --

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1 -Lewkow-
 2 don't go through Sunday.
 3 THE WITNESS: Yeah, I'm looking at
 4 28. Well, I don't have it here then.
 5 Okay. Let me look at it and see if it
 6 helps me...
 7 A. I don't -- I would need to look at
 8 ones that I know I've seen. This does not --
 9 I don't know that I've seen this.
 10 Q. If you look in particular --
 11 A. But, you know, and I realize
 12 litigators do things the way they do things
 13 for the reasons they do, but I'm sure you have
 14 all the ones that have been produced that we
 15 know I've received. So if you show me one
 16 that's got -- that I know I received it, then
 17 I can tell you if this is the same one or not.
 18 But on the face, and looking quickly, I don't
 19 recall this one.
 20 Q. If you turn to the second page of
 21 the document.
 22 A. Yup.
 23 Q. Do you see that same section I
 24 believe we were looking at. In the prior
 25 draft, it was (d); here it is (c). You will

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1 -Lewkow-
 2 see the language that I asked you to read
 3 before --
 4 A. Yup.
 5 Q. -- concerning margin --
 6 A. Yup.
 7 Q. -- is crossed out or deleted?
 8 A. Yup.
 9 Q. Does that refresh your recollection
 10 that you were aware that that language had
 11 been deleted from a draft of the --
 12 MR. MORAG: Objection to form.
 13 A. By counsel for Lehman Brothers?
 14 Q. By anyone.
 15 A. It appears -- I don't know if this
 16 was -- again, it may have been delivered -- I
 17 can't tell without seeing this. It may well
 18 have been deleted from language that was --
 19 that we -- the version we saw. I do think
 20 that language never ended in, so I know it was
 21 deleted at some stage.
 22 Whether this draft is the one I saw
 23 or not? I think that language went in there,
 24 is my understanding. It went in there and I
 25 think it was wrong. It was taking away what

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1 -Lewkow-
 2 had been -- it's interesting. The language
 3 which you've shown me that went in, and it
 4 went in a draft that my partner Mr. Leinwand
 5 sent out.
 6 But it went in there and it
 7 suggests that we were taking out of the deal
 8 somehow what had been agreed to, which is that
 9 margins is part of the position. And I think
 10 that may be to deal -- in an effort, a
 11 mistaken effort to deal with OCC issues. But
 12 it was not the deal, and it should have never
 13 gone in, and it was taken out.

14 Q. Just so I can catch up with you.

15 You were referring to the version
 16 that Mr. Leinwand sent out. That was
 17 Exhibit 49?

18 A. Yes. You showed me language that
 19 you read from that Exhibit 49.

20 Q. You're referring to the margin
 21 language on page 2 in section (d)?

22 A. Yes. That language was added,
 23 correct. And it's in the -- it was added as
 24 part of -- hold on a second.

25 It was part of a sentence that said

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1 -Lewkow-
 2 "Excluded Assets" -- I'm now confusing myself.
 3 Hold on a second.
 4 (Witness reviewing document.)
 5 A. Hold on a second. I withdraw what
 6 I just said. I shouldn't jump to conclusions.
 7 I think this is -- excuse me.
 8 (Witness reviewing document.)
 9 Q. I think you withdrew what you said,
 10 so maybe I should ask another question.
 11 A. Start over. Yes.
 12 Q. Please take whatever time you need
 13 to answer.
 14 A. I rushed. I should take my time
 15 then and answer it carefully.
 16 Q. Understand that I don't want you to
 17 reach conclusions. I'm really looking for
 18 your recollections of what you previously
 19 concluded or previously understood.
 20 A. Uh-huh.
 21 Q. Does looking at the exhibits we put
 22 in front of you refresh your recollection that
 23 there was, in a draft of the clarification
 24 language of the Clarification Letter, language
 25 concerning margin?

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-Lewkow-

1 A. I see there is such language. I
2 very vaguely recall such language now that I
3 see it, but it's very vague.

4 **Q. Do you have a recollection as to**
5 **whether that language was proposed by Cleary**
6 **Gottlieb?**

7 A. I don't know who proposed it. It
8 was sent out in a draft that Dave Leinwand
9 sent out.

10 (Witness reviewing document.)

11 **Q. Do you have an understanding,**
12 **sir --**

13 A. I was --

14 **Q. Sorry.**

15 A. I was taking another look at it. I
16 have not finished the answer.

17 **Q. Sure. Please take as much time as**
18 **you need.**

19 (Witness reviewing document.)

20 A. I believe.

21 (Witness reviewing document.)

22 A. I'm not certain.

23 **Q. Do you know, sir, whether this**
24 **language was put in to reflect the business**

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-Lewkow-

1 **agreement between the parties, that Barclays**
2 **should get Lehman's margin?**

3 MR. MORAG: Objection to form.

4 A. It was my understanding that the
5 Asset Purchase Agreement contemplated as part
6 of Barclays' purchase of all of the assets
7 used in the business subject -- other than
8 Excluded Assets. That among the assets that
9 Barclays was entitled to under the original
10 Asset Purchase Agreement, including margin
11 relating to the account that they were buying
12 as part of the purchase of business.

13 So to suggest that it was put in by
14 someone in a draft was not to say that it
15 wasn't -- again, these are people who were
16 dealing with a lot of different things. It
17 was not to make a -- to the extent that's what
18 this document does or would have done if it
19 were in the final agreement, it was not, in my
20 view, making a change in what the deal was.

21 **Q. So you understood that this**
22 **language was effectuating the APA by conveying**
23 **the margin from Lehman to Barclays?**

24 MR. MORAG: Objection to the form

25 TSG Reporting - Worldwide 877-702-9580

-Lewkow-

1 of the question.

2 A. "Effectuating" is a funny word.
3 But I think it was consistent with the APA in
4 view of the -- again, things were being done
5 to the Clarification Letter on other things
6 that had been done. And there had been
7 changes made to cause romanette ii on page 1
8 over to the definition of what were Purchased
9 Assets.

10 We had, by this stage, I believe,
11 deleted the reference that had originally been
12 in the Asset Purchase Agreement. The
13 reference to "long positions" had been
14 deleted, and there were changes that reflected
15 the Repurchase Agreement that we were -- we
16 had already paid for. Barclays had
17 effectively already paid for the securities.
18 And those were changes. And I think people
19 were trying to make changes that preserved the
20 -- the provision of what was in the Asset
21 Purchase Agreement.

22 **Q. Did you have an understanding that**
23 **there was anything wrong in this language,**
24 **that there was anything -- any respect to**

25 TSG Reporting - Worldwide 877-702-9580

-Lewkow-

1 **which this reference to "margin" here, this**
2 **language, failed to effectuate the parties'**
3 **business agreement?**

4 MR. HUME: I'm going to object to
5 the form of the question and the lack
6 of foundation. Just to make clear --
7 correct me if I'm wrong -- Mr. Lewkow
8 is not the 30(b)(6) witness --

9 THE WITNESS: No, I'm not.

10 MR. HUME: -- on this provision?

11 MR. MORAG: He is not.

12 MR. HUME: And he's testified he
13 doesn't recall the provision.

14 THE WITNESS: I don't recall.

15 MR. HUME: So I think I'm going to
16 object on lack of foundation as well.

17 **Q. You don't --**

18 A. I don't personally recall.

19 **Q. You don't recall. Okay.**

20 **You referred to "Excluded Assets."**
21 **Can I ask you to take out the Asset Purchase**
22 **Agreement, Exhibit 1, somewhere in that file**
23 **before you?**

24 A. Yup. I have it.

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1 -Lewkow-

2 **Q. When you described in your**
 3 **Declaration that none of your partners had**
 4 **indicated any suggestion that any property**
 5 **that was collateralizing exchange-traded**
 6 **derivatives was going to Barclays?**

7 MR. MORAG: That was not --

8 THE WITNESS: I think you got it
 9 backwards.

10 MR. MAGUIRE: I'm sorry. Did I put
 11 a double negative there?

12 MR. MORAG: You said none was going
 13 to Barclays?

14 A. Why don't you start over?

15 Q. Yes.

16 A. Do you want to look at my
 17 declaration?

18 **Q. Still looking at your Declaration.**
 19 **Yes. It think it was Paragraph 17 we were**
 20 **looking at.**

21 A. Yes.

22 **Q. And that was the suggestion there?**

23 A. That "no one had suggested in my
 24 presence or based on my conversations" --

25 Q. Yes.

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1 -Lewkow-

2 if his statement of declaration is
 3 consistent with his understanding of
 4 the Asset Purchase Agreement?

5 **Q. I'm asking about the conversations**
 6 **that you had with your partners that you**
 7 **referred to.**

8 **In any of those conversations, did**
 9 **any of those partners say, You better look at**
 10 **this?**

11 A. I'm not an expert on 30(b)(6). I
 12 would refer to M&A litigation counsel who are
 13 sitting in the next two seats to my right.

14 But it seems to me if any of them
 15 did do it and they were here in their personal
 16 capacity being deposed about how they
 17 interpreted the contract, they wouldn't be
 18 required to tell you the interpretation.

19 Therefore, the fact is that as
 20 30(b)(6), I can't imagine, changes the rules
 21 on that. But I would defer to my counsel and
 22 counsel for Barclays on that. I told you, I
 23 used to be a lawyer.

24 MR. HUME: I think you should
 25 answer the question and we should take

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1 -Lewkow-

2 A. "--in my partners' presence that
 3 any portion of the property held to secure
 4 Lehman's exchange-traded derivatives was not
 5 to be transferred to Barclays as part of the
 6 transaction."

7 **Q. Did any of your partners bring to**
 8 **your attention any of the particular**
 9 **provisions of the Asset Purchase Agreement in**
 10 **connection with the conversations you**
 11 **described in Paragraph 17?**

12 MR. HUME: I think that calls for
 13 privileged work product. You're asking
 14 did anyone --

15 **Q. Yes. Did anyone say to you in**
 16 **words or substance: Mr. Lewkow, you've asked**
 17 **me whether anything here is suggestive that**
 18 **this property was not going to Barclays, well,**
 19 **you better take a look at this particular**
 20 **section of the Asset Purchase Agreement?**

21 MR. HUME: I think it still does
 22 call for a privileged communication or
 23 interpretation of the contract. The
 24 declaration says no one --

25 MR. MORAG: Why don't you ask him
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1 -Lewkow-

2 a short break.

3 THE WITNESS: I should answer the
 4 question?

5 MR. HUME: Answer the question if
 6 it doesn't reveal a privilege.

7 A. Can I hear the question again?

8 **Q. Did any of the partners to whom you**
 9 **refer in Paragraph 17 say to you, in**
 10 **connection with whether there was any**
 11 **suggestion that any of this property was not**
 12 **to be transferred to Barclays, did any of them**
 13 **say, You better look at this provision of the**
 14 **Asset Purchase Agreement?**

15 A. No.

16 **Q. Either in those words or in**
 17 **substance.**

18 A. I am familiar with the Asset
 19 Purchase Agreement. I think the Asset
 20 Purchase Agreement always reflected the
 21 understanding of the parties that this was
 22 coming along that I could point to, they can
 23 point to provisions that show that.

24 Did any of them suggest there was
 25 language inconsistent with this? I don't

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1 -Lewkow-
2 recall anyone suggesting that.
3 MR. HUME: Do you want to take a
4 short break?
5 MR. MAGUIRE: Sure.
6 (Whereupon, a recess was taken
7 from 4:50 p.m. to 5:01 p.m.)
8 MR. MAGUIRE: Sir, I have no
9 further questions, thank you.

10 EXAMINATION BY

11 MR. HUME:

12 **Q. Mr. Lewkow, I'm Hamish Hume and I'm**
13 **here representing Barclays, as you know. I**
14 **just wanted to make sure one thing on the**
15 **record is clear.**

16 **On page 197 of the rough transcript**
17 **we are looking at, you were asked a question**
18 **by counsel for the Trustee. This was**
19 **referring to the conversation you testified to**
20 **with Weil Gotshal about the \$769 million in**
21 **securities.**

22 **The question was: "And did you**
23 **understand that person from Weil to be**
24 **agreeing that Barclays would get \$769 million**
25 **unconditionally as part of the sale as opposed**

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1 -Lewkow-
2 **to simply agreeing to the inclusion of the**
3 **language proposed 'to the extent permitted by**
4 **applicable law'?"**

5 **Your answer was "No," and then you**
6 **went on with an explanation.**

7 **Let me just make sure the record is**
8 **clear in terms of the "yes" and the "no" of**
9 **that question.**

10 **Was it your understanding from your**
11 **conversation with Weil Gotshal that you**
12 **referenced relating to the \$769 million in**
13 **securities, that Barclays did have an**
14 **unconditional right to receive those assets?**

15 A. Yes. The question, with all due
16 respect, was ambiguous, because I was offered
17 a choice, was I agreeing -- was the Lehman
18 person agreeing unconditionally to pay or
19 agreeing -- "simply agreeing," was your term,
20 to the inclusion of language "to the extent
21 permitted by applicable law." That was a
22 choice. And I started with "no." My "no" was
23 addressed to the end of your question, that it
24 was not merely "to the extent permitted by
25 applicable law."

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1 -Lewkow-
2 It was, as I explained in the rest
3 of my answer, the discussion of "the
4 applicable law," as I understood what the
5 individual was saying on behalf of Lehman, was
6 merely to 15c3-3 and not to the concept that
7 if that were not payable, there would be an
8 unconditional obligation to deliver the
9 securities some other way.

10 MR. HUME: I have no other
11 questions.

12 MR. MAGUIRE: Nothing further.
13 (Time noted: 5:05 p.m.)

14
15
16
17 VICTOR I. LEWKOW
18
19
20
21
22
23
24
25

Subscribed and sworn to before me,
this ____ day _____ of 2010.

Notary Public

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1 -----I N D E X-----
2 WITNESS EXAMINATION BY PAGE
3 V. LEWKOW MR. GAFFEY 5

4 MR. MAGUIRE 160
5 MR. HUME 226

6
7 DIRECTIONS: PAGE 79, 134, 185
8 MOTIONS: [None]
9 REQUEST: [None]

10 -----EXHIBITS-----
11 EXHIBIT FOR I.D.

12 Exhibit 613A 6
13 Declaration of Victor Lewkow

14
15
16 Exhibit 614A 135
17 Letter from S&C, CGSH
18 00020701-20714

19
20 Exhibit, 615A 195
21 2PP 9/18/08 e-mail from J.
22 Potenciano to distribution re:
23 Preliminary 15c3-3 reserve lock-up
24 as of 9/17/08

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1	-----EXHIBITS-----
2	[previously marked]
3	EXHIBIT FOR I.D.
4	Exhibit 1 29
5	Exhibit 19 31
6	Exhibit 518 45
7	Exhibit 25 47
8	Exhibit 24 58
9	Exhibit 27 69
10	Exhibit 579B 74
11	exhibit 581B 92
12	Exhibit 28 93
13	Exhibit 29 93
14	Exhibit 30 93
15	Exhibit 31 93
16	Exhibit 32 93
17	Exhibit 33 93
18	Exhibit 34 93
19	Exhibit 35 93
20	Exhibit 36 93
21	Exhibit 37 93
22	Exhibit 34 95
23	Exhibit 451 208
24	Exhibit 49 210
25	-----

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1 C E R T I F I C A T E
2
3 STATE OF NEW YORK)
4) ss.:
5 COUNTY OF KINGS)
6 I, MAYLEEN CINTRON, a Registered
7 Merit Reporter, Certified Realtime
8 Reporter and Notary Public within and
9 for the State of New York, do hereby
certify:

10 That VICTOR I. LEWKOW, the witness
11 whose deposition is hereinbefore set
12 forth, was duly sworn by me and that
13 such deposition is a true record of the
14 testimony given by such witness.

15 I further certify that I am not
16 related to any of the parties to this
17 action by blood or marriage; and that I
18 am in no way interested in the outcome
19 of this matter.

20 IN WITNESS WHEREOF, I have hereunto set
21 my hand this 10th day of February, 2010.

22 -----
23 MAYLEEN CINTRON, RMR, CRR
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1 ERRATA SHEET FOR THE TRANSCRIPT OF:
2 Case Name: Re: Lehman Brothers Holdings
3 Dep. Date: February 10, 2010
4 Deponent: Cleary Gottlieb | Victor I. Lewkow
5 Pg. Ln. Now Reads Should Read Reason
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VICTOR I. LEWKOW

SUBSCRIBED AND SWORN BEFORE ME,
This ___ day of _____, 2010.

Notary Public
My Commission Expires: _____

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